

N28CallH

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 PETER ALLEN, et al.,

4 Plaintiffs,

5 v.

19 Civ. 8173 (LAP)

6 NEW YORK STATE DEPARTMENT OF
7 CORRECTIONS AND COMMUNITY
8 SUPERVISION, et al.,

9 Defendants.

-----x

10 New York, N.Y.
11 February 8, 2023
12 9:30 a.m.

13 Before:

14 HON. LORETTA A. PRESKA,

15 District Judge

16 APPEARANCES

17 LAW OFFICE OF AMY JANE AGNEW PC

18 Attorneys for Plaintiffs

19 BY: AMY J. AGNEW

20 JOSHUA L. MORRISON

21 NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

22 Attorneys for Defendants

23 BY: MICHAEL J. KEANE

24 IAN RAMAGE

25 WHITEMAN OSTERMAN & HANNA LLP

Attorneys for Defendant Dr. Carol Moores

BY: ORIANA L. KILEY

WILLIAM S. NOLAN

GABRIELLA LEVINE

JENNIFER M. THOMAS

ALSO PRESENT:

MERCEDES AVALOS, Spanish Interpreter

VIVIAN GOA, Spanish Interpreter

N28CallH

1 THE COURT: As we start, would you all give your
2 attention to Ms. Phillips.

3 THE INTERPRETER: Good morning, your Honor.

4 THE DEPUTY CLERK: Are you certified court
5 interpreters?

6 THE INTERPRETER: That's fine. Yes, we do have a
7 standing oath with this Court.

8 THE DEPUTY CLERK: Time out. We have two witnesses.

9 MS. AGNEW: Could we please have Mr. Moronta --
10 interpreter, if you can help me. We're going to ask him to sit
11 aside for a little bit while we take Mr. Felipe Rivera-Cruz's
12 testimony and then we'll move right to him.

13 THE WITNESS: Okay.

14 MS. AGNEW: If Mr. Moronta can get someone in his room
15 to mute his computer. Mr. Moronta, we're going to mute you
16 from here and sit tight, we'll get to you as soon as we can.

17 MR. NOLAN: Your Honor, one issue. Shouldn't we have,
18 because he's going to be testifying and I don't believe he's in
19 the caption, the non-testifying witness removed from
20 proceedings from now?

21 THE DEPUTY CLERK: We're moving him into a breakout
22 room.

23 MR. NOLAN: Okay. I wasn't sure.

24 FELIPE RIVERA-CRUZ,

25 called as a witness by the Plaintiffs,

N28CallH

Rivera-Cruz - Direct

1 having been duly sworn, testified as follows:

2 THE DEPUTY CLERK: Please state your name and spell it
3 for the record.

4 THE WITNESS: My name is Felipe Rivera-Cruz.

5 MR. MORRISON: Do you want to put on the record the
6 instructions provided to Mr. Rivera-Cruz before.

7 THE INTERPRETER: Prior to starting the session, the
8 interpreters had a brief exchange with Mr. Rivera-Cruz to
9 instruct him about how consecutive interpreting works, that
10 there will be a session of question and answers for him to
11 please wait for the question to be interpreted into Spanish for
12 him and to give his answer in Spanish and that the interpreters
13 will interpret it into English, to please make his answers
14 brief, sentence by sentence or phrase by phrase, and to allow
15 us the opportunity to interpret them and the interpreters will
16 let him know at any point if his answers are long enough for
17 him to pause.

18 THE COURT: Yes.

19 DIRECT EXAMINATION

20 BY MR. MORRISON:

21 Q. Good morning, Mr. Rivera-Cruz. How are you doing?

22 A. I'm good.

23 Q. Before we start, I want to make sure, is there anyone else
24 in the room with you right now?

25 A. No, I am alone in the room.

N28CallH

Rivera-Cruz - Direct

1 Q. Great. Let me ask you, Mr. Rivera-Cruz, how old are you
2 right now?

3 A. 64.

4 Q. And what correctional facility are you living in?

5 A. In Shawangunk.

6 Q. And do you have a current medical provider at Shawangunk?

7 A. Yeah, so I have problems in my legs, and I don't know if
8 you can see it, but I have a bump here on the left of my neck.

9 Q. Mr. Rivera-Cruz, who is your medical provider right now, if
10 you know?

11 A. His name is Dr. Win

12 Q. How long have you been living at Shawangunk?

13 A. I've been here for seven years.

14 Q. And has Dr. Win always been your provider while you've been
15 at Shawangunk?

16 A. Yes. Yes, at first, it was Dr. Lee and now it's Dr. Win.

17 Q. How long ago did Dr. Win become your medical provider?

18 A. So, Dr. Win was placed here about a year ago. So that
19 means that out of the seven years that I have been here, it is
20 Dr. Win that is providing me with care now for a year.

21 Q. When did you get transferred to the New York State
22 Department of Corrections?

23 A. Well, I have been in prison from the first time that I was
24 arrested, which was in 2009. Well, at first, I was in Rikers
25 Island until about the time of trial. Then, about three and a

N28CallH

Rivera-Cruz - Direct

1 half years later, I was transferred to Five Points

2 Q. Do you remember what year you were transferred to Five
3 Points?

4 A. I'm not quite sure, but around 2013.

5 Q. Prior to entering Five Points, did you suffer from any
6 medical condition that caused you pain?

7 A. Well, I have had this pain ever since I received the 17
8 shots that I received all over my body, and since then, I have
9 been suffering from this pain. I am supposed to be on
10 medication.

11 Q. Let's talk about those 17 shots. When did that occur?

12 A. That was in Puerto Rico on August 27th, 2003.

13 Q. Can you describe to the Court where you were shot.

14 A. Well, those shots were at the entry point of the La Lula
15 complex in Ponce.

16 Q. Where in your body were you shot?

17 A. One on my face, it came in through my face and it went out
18 through my neck, another one on my hand, and nine shots on my
19 back, and then others on my belly.

20 Q. After you were shot, can you just describe the care you
21 received and any injuries that remain today as a result.

22 A. There or here?

23 Q. Let's start, you were shot in Puerto Rico; correct?

24 A. Yes.

25 Q. What treatment did you receive in Puerto Rico after being

N28CallH

Rivera-Cruz - Direct

1 shot?

2 A. So while I was in Puerto Rico, I was receiving therapy on
3 several occasions. I was receiving -- or supposed to get
4 medication. The thing is the medical insurance there, the SSS
5 would not cover those medications, so I had to come here to the
6 United States to receive the proper care.

7 Q. When did you arrive to the United States to receive
8 treatment?

9 A. That was in 2003. I had to wait for some time so I could
10 recover some and be able to get on a plane. I had to wait for
11 one year.

12 Q. After you were shot, were you able to walk or did it have
13 any effect on your ability to walk?

14 A. Well, the thing is that one of the shots entered my spine,
15 it hit my spine at the T6 level, and that's prevented me from
16 walking. I have been unable to walk since 2003 until now.

17 Q. As a result of the shots you received in 2003, have you
18 been required to use catheters, urinary catheters?

19 A. Yes, I have them right now because I am unable to hold my
20 urine.

21 Q. What other conditions occurred, that you understand, as a
22 result of your injuries from being shot?

23 A. So my pain is permanent. And I have a problem in both legs
24 such that when I sit in a chair, my legs turn black.

25 Q. I want to talk about when you came to America for treatment

N28CallH

Rivera-Cruz - Direct

1 in 2003. Where did you go, what part of the United States did
2 you go to?

3 A. I went to my niece's home in the Bronx.

4 Q. Did you receive treatment in a hospital or a clinic when
5 you came to the Bronx?

6 THE INTERPRETER: Your Honor, may the interpreter ask
7 the witness to repeat the name of the hospital?

8 THE COURT: Yes, ma'am.

9 A. Mount Sinai. Yes, so the doctor that provided care for me
10 gave me instructions to go to Mount Sinai Hospital.

11 Q. Was that the doctor from Puerto Rico?

12 A. Yes.

13 Q. Can you tell me the type of care you received when you
14 started to be treated at Mount Sinai Hospital in 2003?

15 A. Yes. So there, I was given prescriptions, pain medication,
16 and I was referred to therapy twice per week.

17 Q. Let's start with the pain medication that you were
18 prescribed. Do you remember what the names of the medications
19 were?

20 A. It was Lyrica, and there are others that I do not remember.
21 The thing is that the names are in English and I don't read
22 English.

23 Q. That's fair, but let's talk about the Lyrica. Was Lyrica
24 helpful for your pain?

25 A. Yes, it was helpful because it keeps the nerves under

N28CallH

Rivera-Cruz - Direct

1 control, which is what is affected.

2 Q. You also said that you were taking physical therapy; is
3 that right?

4 A. Here in prison, you mean?

5 Q. No, in 2003 when you came to the Bronx.

6 A. Yes, I was referred to therapy.

7 Q. How often would you receive physical therapy before you
8 were incarcerated and living in the Bronx?

9 THE INTERPRETER: Your Honor, the connection was
10 interrupted there. May the interpreter ask the witness to
11 repeat his answer?

12 THE COURT: Yes, ma'am.

13 A. So I was referred to therapy twice a week and I was
14 receiving therapy twice a week every week. It helped somewhat
15 because I was able to recover some of my mobility. Up until
16 that point, I was unable to move from my chair to my bed and
17 from my bed to a chair. And I did recover my mobility in
18 therapy, which remains so to date. However, there has been no
19 further development, it just got stalled there.

20 Q. From 2003 to the time that you were arrested, I believe you
21 said in around 2009 or so and put in Rikers, were you being
22 prescribed Lyrica continuously?

23 It looks like the connection froze.

24 Mr. Cruz, can you hear me?

25 (Pause)

N28CallH

Rivera-Cruz - Direct

1 Can you hear me, Mr. Cruz? You froze.

2 A. Yes, I can hear you.

3 Q. Let me re-ask the question. From the point you arrived in
4 the Bronx for treatment in 2003 to when you were arrested, did
5 you continuously receive the prescription Lyrica to treat your
6 pain?

7 A. Yes, that's correct.

8 Q. And during that same period of time, were you also
9 regularly seeing a medical doctor or provider regarding your
10 pain and issues?

11 A. Yes.

12 Q. At any point in time, did any of those medical providers --

13 MR. MORRISON: Strike that.

14 Q. When you arrived and were arrested and sent to Rikers
15 Island, did you continue to receive Lyrica medication for your
16 pain?

17 A. Yes, that's correct.

18 Q. At any point in time, did they stop your Lyrica when you
19 were on Rikers Island?

20 A. No.

21 Q. When you were transferred to the New York State Department
22 of Corrections from Rikers Island, did your Lyrica prescription
23 continue?

24 A. Yes, that's correct.

25 Q. And what correctional facility did you first enter into?

N28CallH

Rivera-Cruz - Direct

1 A. Five Points.

2 Q. At any point in time, did your Lyrica prescription change
3 or get discontinued while you were in the Department of
4 Corrections, New York State Department of Corrections?

5 A. No, they always gave it to me, they always did, and still,
6 when I went to Five Points, I was receiving it. When I got
7 here, the doctor here took it away from me. He just didn't
8 give it to me anymore. Since then, I started to feel unwell.

9 Q. What year did you transfer from Five Points to Shawangunk
10 Correctional Facility?

11 A. If I'm not mistaken, in 2015.

12 Q. And when you arrived at Shawangunk in 2015, how did you
13 learn that your Lyrica prescription was taken away?

14 A. Well, because the pill is kind of red, so when I asked for
15 it, the nurse told me that the doctor had discontinued it.

16 Q. Prior to that, did you ever talk to your provider about
17 your pain and your medication?

18 A. Yes, I told them, but when I did, what he wanted to give me
19 was aspirin or some other type of medication, and that's not
20 the one, that is not what I use. What I use is Lyrica because
21 Lyrica is what calms my nerves and my pain.

22 Q. Mr. Rivera-Cruz, when you spoke to your doctor after you
23 arrived in Shawangunk, do you recall whether there was someone
24 there to interpret for you?

25 A. No, I have never been provided an interpreter here. I just

N28CallH

Rivera-Cruz - Direct

1 get by with the very little English that I know and that's it.

2 Q. And when you arrived at Shawangunk, Dr. Lee was your
3 provider?

4 A. Yes, that's correct.

5 Q. And just to be clear, does Dr. Lee speak Spanish?

6 A. No, because I think his language is Chinese.

7 Q. You informed Dr. Lee that Lyrica worked to treat your pain;
8 correct?

9 A. Yes, that's correct.

10 Q. What is your understanding of why Dr. Lee didn't prescribe
11 that medication for you?

12 A. Well, he told me that that medication had been discontinued
13 by the company. I don't know whether that was true or not
14 because that had never happened to me before.

15 Q. What medications were you provided for pain while at
16 Shawangunk?

17 A. Well, I tried Motrin, which is what he prescribed, and
18 aspirin, but that type of medication does not work for me.

19 Q. Can you describe to me the consequences or how you feel
20 when you are not on Lyrica medication?

21 A. I feel pain all over my body, my nerves start to jump, I
22 get cramps in my legs, and that doesn't let me sleep. So, I
23 can't sleep, and then the following day the spasms start again,
24 I can't control them, I can't sleep, I can't do anything. You
25 understood?

N28CallH

Rivera-Cruz - Direct

1 Q. Have you informed your medical providers now or at any
2 point in time about these effects of not having Lyrica?

3 A. So, yes, I spoke with them with the little bit of English
4 that I have, telling them that I have a lot of pain and that my
5 legs start to jump, from one day to the next, I don't sleep,
6 and they're going to have to do something about it.

7 Q. And what, if anything, do they do about it?

8 A. No, they didn't do anything. So then I go back to my cell
9 to pass the pain. So I'm going to be in pain the entire time
10 that I'm going to be here? That's not possible.

11 Q. Just to jump ahead a little bit to be clear, do you know
12 what medication you are on right now for pain?

13 A. No, they're not giving me anything. I have to withstand
14 it.

15 Q. Are you on any medication for muscle spasms right now that
16 you're aware of?

17 A. None.

18 Q. Are you aware if you're taking a medication called
19 baclofen?

20 A. I'm not sure. When I take pills for my urine to remove the
21 water and three other pills, whose name I don't know. Then I
22 take another pill at 5:30 in the afternoon.

23 Q. Since you've been in Shawangunk, have you ever been sent
24 out to an outside specialist for a consultation?

25 A. Well, since I used to take that pill, I was under control.

N28CallH

Rivera-Cruz - Direct

1 So they recommended me to a specialist outside of the jail to
2 get braces because I use braces on both legs.

3 Q. How long ago was that?

4 A. I came with the braces on from the street. I came with
5 them.

6 Q. Can you use your braces -- I'm sorry. Continue.

7 A. So the problem with those braces is the first one that I
8 had, they break. The doctor that saw me when I went to Five
9 Points had some new ones made for me.

10 Q. Were you able to use the braces while you were at Five
11 Points while on your pain medication?

12 THE INTERPRETER: Could you repeat the question?

13 Q. Were you able to use your braces when they were fixed at
14 Five Points while you were on your pain medication?

15 A. Yes.

16 Q. How about right now, do you use your braces at Shawangunk?

17 A. So initially, I was using them and going to physical
18 therapy, but then something new started in my feet. My feet
19 get black.

20 Q. Are you currently able to use your braces?

21 A. So, no, I can't use them because when the swelling starts,
22 I can't use them. Right now, that's what's happening.

23 Q. When did your feet start getting black?

24 A. About two years ago.

25 Q. Your feet getting black, does that cause pain?

N28CallH

Rivera-Cruz - Direct

1 A. It causes pressure and they start to beat, pulse, pulsate.

2 Q. Does that hurt?

3 A. Yeah, I went to the hospital, it hurts. October of 2002, I
4 went to the hospital and they were going to amputate my legs.

5 Q. And what happened?

6 A. When I went to Albany, I was seen by a doctor --

7 THE INTERPRETER: I'm saying this phonetically.

8 A. -- Dr. Alo.

9 Q. What was the result, were you diagnosed with anything, that
10 you're aware of?

11 A. I checked me out and he marked my leg where he was going to
12 amputate it. So it was going to be a little bit below the knee
13 and he said if the infection got to my bones, then he would
14 have to amputate them.

15 Q. So it's your understanding you had an infection in October
16 when you were in the hospital?

17 A. Yes, that's right.

18 Q. How long were you in the hospital for?

19 A. Five days.

20 Q. During that five days, are you aware of whether you were
21 put on any pain medication by the hospital doctors?

22 A. Yes, they gave me medication, morphine. They gave me
23 morphine and another medication that I really don't remember
24 very well. They gave me a CAT scan and they took a bunch of
25 x-rays.

N28CallH

Rivera-Cruz - Direct

1 Q. After those five days at the hospital when you returned to
2 Shawangunk, were you provided any pain medication?

3 A. Yeah, he gave me pills for the pain. And I got an
4 infection, I don't know where I got it. I was telling the
5 doctor here that I think I have an infection in my legs, I was
6 telling him. So the treatment he gave me was giving me pills
7 for six days, that's all.

8 Q. Do you know what those pills were?

9 A. I don't remember. They were big pills. They were like
10 light red.

11 Q. Was it your understanding they were for pain or for
12 something else?

13 A. No, for the infection.

14 Q. So after you got back from the hospital, to be clear, you
15 weren't prescribed any pain medication by your medical
16 provider?

17 A. The one outside gave me medication, prescribed medication
18 for just a short amount of time.

19 Q. Did your providers at Shawangunk continue that medication?

20 A. Yeah, they gave it to me until I finished the prescription
21 of the pills, until I finished them all.

22 Q. Are you talking about the pills you got for six days?

23 A. No, the pills that he gave me for six days was for
24 something different. It was when I started to see that my legs
25 were swelling and I went to see the doctor here.

N28CallH

Rivera-Cruz - Direct

1 Q. Did the pills that you received help relieve the pain you
2 were in?

3 A. No, because the infection continued. So, no, the infection
4 continued. What he should have done was send me out there to
5 get proper care, not wait until the end. I don't want to lose
6 my legs.

7 Q. Mr. Rivera-Cruz, do you remember when I came out to see you
8 a few weeks ago?

9 A. Yes.

10 Q. Well, first, I want to apologize for exposing you to COVID,
11 just up front, I'm sorry about that.

12 A. Well, no problem. You know that illness was brought on by
13 God and you can't go against God.

14 Q. I do want to ask you, since I came and saw you with
15 Ms. Agnew, has any doctor or provider called you in or examined
16 you about your legs and feet right now?

17 A. No, when I was up there, because the hospital is upstairs
18 or up there. No, well, they put us there and we stayed there
19 for 10 days because they said it was one of the lawyers who had
20 COVID.

21 Q. I understand that. Has any doctor, since I came and saw
22 you with Ms. Agnew, come and examined you and discussed what is
23 going on with your feet right now?

24 A. So, no, not yet. When I went up there because of the
25 COVID, he did check out my legs and he told me to raise them

N28CallH

Rivera-Cruz - Direct

1 high for the blood to circulate, but that's all.

2 Q. Are you aware of any other treatment plan that has been
3 entered for you in regards to your feet and pain since
4 Ms. Agnew and I came and saw you at Shawangunk?

5 A. No. He told me that he had signed me up to see the doctor
6 for the legs outside, but they still haven't called me yet.

7 Q. And I don't think I asked this, but just to be clear, does
8 Motrin or aspirin or Tylenol effectively treat the pain that
9 you are in?

10 MR. NOLAN: Objection. To the extent it requires an
11 expert.

12 THE COURT: It doesn't require an expert.

13 MR. NOLAN: He asked does it treat his pain. We can
14 talk about symptoms, but whether it's the proper effective
15 treatment, I'm not sure that's the proper question.

16 THE COURT: Overruled. You may answer, sir.

17 THE INTERPRETER: Could you please repeat the
18 question.

19 Q. Just to be clear, does Motrin, Tylenol, or aspirin
20 effectively treat your pain?

21 A. No, that kind of medication, that's not for me. It doesn't
22 do anything to me.

23 Q. Does Lyrica effectively treat your pain, in your
24 experience?

25 A. That's the one that controls my nerves, my spasms and

N28CallH

Rivera-Cruz - Cross

1 everything, that's the one that I need.

2 Q. And you have informed Dr. Win about the effect Lyrica has
3 to your pain?

4 A. No, the thing is that my English is not good, so I can't
5 explain it to him in English as well as I could in Spanish.

6 MR. MORRISON: One moment.

7 Nothing further. Thank you, Mr. Cruz.

8 THE COURT: Cross examination, please, counsel.

9 MS. KILEY: Can we take a recess, please.

10 THE COURT: All right. Five minutes. We don't need
11 to do this each time.

12 MS. AGNEW: Interpreter, please tell Mr. Rivera-Cruz
13 we're going to take a five-minute break and the other lawyers
14 are going to ask him questions.

15 THE WITNESS: Okay. That's fine.

16 (Recess)

17 THE COURT: Cross examination, counsel, please.

18 MS. THOMAS: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MS. THOMAS:

21 Q. Sir, I have just a few questions for you this morning.

22 A. Yes, ma'am.

23 Q. Sir, you testified earlier that you cannot read English; is
24 that correct?

25 MS. AGNEW: Objection. That wasn't his testimony,

N28CallH

Rivera-Cruz - Cross

1 your Honor.

2 MS. THOMAS: Your Honor, respectfully, it was his
3 testimony. He did say specifically that he could not read
4 English.

5 THE COURT: He said he couldn't read it well, isn't
6 that what he said?

7 MS. THOMAS: I'm happy to rephrase my question.

8 THE COURT: Does the interpreter have to interpret the
9 back and forth between counsel and the Court?

10 MS. AGNEW: I don't think so.

11 MR. MORRISON: If it's distracting to you, your Honor,
12 no.

13 THE COURT: Is that all right with everybody? Okay.

14 Counsel, would you ask the question again, please.

15 BY MS. THOMAS:

16 Q. Sir, can you read any English on paper?

17 A. I tried to, but it's very hard for me and I don't
18 understand very well what they're trying to say.

19 Q. Sir, you had testified earlier about going to a hospital
20 for an infection. Could you please state when that occurred?

21 A. It was October 1st of 2002.

22 MS. AGNEW: Interpreter, is it possible he means '22?

23 THE WITNESS: 2002.

24 Q. Sir, you had testified earlier that you had Lyrica
25 discontinued in 2015; is that correct?

N28CallH

Rivera-Cruz - Cross

1 A. Yeah, when I got to this prison.

2 Q. And when your Lyrica was discontinued in 2015, that was not
3 because of a policy referred to as MWAP; is that correct?

4 A. What was the question?

5 Q. In 2015 when your Lyrica was discontinued, that was not
6 because of a policy referred to as MWAP; is that correct?

7 MR. MORRISON: Objection.

8 THE COURT: Yes.

9 MR. MORRISON: Calls for speculation.

10 THE COURT: Are you able to answer the question, sir?

11 THE WITNESS: I can't explain it because I don't know
12 what their policy is.

13 Q. Sir, have you ever heard of a policy referred to as
14 M-W-A-P, medications with abuse potential?

15 A. No.

16 Q. And in 2015 when your Lyrica was discontinued, you were not
17 told it was the result of any policy; is that correct?

18 A. No, they didn't tell me that, no.

19 Q. And I believe you had previously testified that Dr. Lee
20 told you that he would not prescribe you Lyrica; is that
21 correct?

22 A. Yeah, he discontinued it.

23 Q. And when Dr. Lee discontinued your Lyrica, he did not tell
24 you that was the result of a policy; is that correct?

25 A. He didn't give me a reason.

N28CallH

Rivera-Cruz - Cross

1 Q. And you had testified earlier that Dr. Win would not
2 prescribe you Lyrica; is that correct?

3 A. No, it wasn't Dr. Win, it was Dr. Lee, the first one.

4 Q. Did you ever have discussions with Dr. Win specifically
5 about Lyrica?

6 A. Yeah, I spoke to him about the pain, but I can't complain
7 to him or demand that medication because he discontinued it.

8 Q. Is it your testimony, sitting here today, that Dr. Win
9 discontinued your Lyrica?

10 A. No, the one who discontinued it was Dr. Lee, the first one.

11 Q. And at any -- sorry, sir. There is no question pending.

12 THE COURT: Let him finish the answer.

13 Sir, would you finish your answer, please.

14 A. Dr. Lee took it way. Dr. Win came later because he didn't
15 work anymore.

16 Q. I understand.

17 Did you ever specifically mention the name "Lyrica" to
18 Dr. Win?

19 A. I couldn't talk to him about it because he's not the one
20 who discontinued it.

21 Q. Sir, do you recall submitting a declaration in support of
22 plaintiffs' motion for a preliminary injunction in this matter?

23 A. Not that I know of, no.

24 Q. Did you ever sign a document containing testimony or facts
25 about this particular case in the fall of 2022?

N28CallH

Rivera-Cruz - Redirect

1 THE INTERPRETER: I'm sorry. Could you please repeat
2 the question.

3 Q. Do you recall signing a document containing testimony on
4 your behalf in the fall of 2022?

5 A. As far as I know, I haven't signed.

6 MS. THOMAS: Nothing further, your Honor.

7 THE COURT: Thank you. Redirect, please, counsel.

8 MR. MORRISON: Yes, briefly.

9 MS. AGNEW: Your Honor, we're just pulling up the
10 Spanish version of his declaration so he can see.

11 THE COURT: Yes, ma'am.

12 MS. AGNEW: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. MORRISON:

15 Q. Mr. Rivera-Cruz, how are you?

16 A. I'm well.

17 Q. Do you see a document on the screen?

18 A. Yes.

19 Q. Mr. Rivera, can you take a moment and just read through
20 this document briefly and tell me if you recognize it.

21 A. Okay.

22 Q. Do you recognize this document, Mr. Rivera-Cruz?

23 A. Yes, I do know the document.

24 Q. Do you remember reading this document and declaring the
25 truth of what is asserted in this document?

N28CallH

Rivera-Cruz - Redirect

1 A. Yes.

2 MR. MORRISON: Your Honor, I would like to mark this
3 as Exhibit P59.

4 THE COURT: Okay.

5 MR. MORRISON: And move to admit it. We'll get it
6 printed and distributed.

7 THE COURT: Any objection?

8 MR. NOLAN: We're going to object to the admission of
9 it. We've never seen it before. We've received no certified
10 copy of any translation with the affidavit.

11 We note for the record that at the top left-hand of
12 the document, it says it was last modified on December 23rd,
13 2022, long after the declaration in question was submitted in
14 English.

15 MS. AGNEW: Your Honor, that's the date the document
16 was last opened on our system. It says "modified" when the
17 version was opened.

18 MR. NOLAN: Therefore, it's a different version than
19 he saw.

20 THE COURT: "Open" doesn't mean necessarily
21 "modified."

22 MR. NOLAN: But it says "modified," Judge.

23 MS. AGNEW: Your Honor, we can get a forensic expert
24 to submit a declaration that explains --

25 THE COURT: In the meantime, let's take the testimony.

N28CallH

Rivera-Cruz - Redirect

1 If there is an issue, counsel can move to strike it.

2 MR. MORRISON: I think I can clear that up.

3 BY MR. MORRISON:

4 Q. Mr. Rivera-Cruz, do you remember receiving a paper version
5 of this document in the mail, sent to you from our office?

6 A. Well, who was it sent from?

7 Q. From the Law Office of Amy Jane Agnew to you at Shawangunk.

8 Do you remember receiving this in the mail?

9 A. Yes, I believe so.

10 Q. I want to talk briefly about the testimony regarding you
11 going to the hospital about infections in your leg. Do you
12 remember that?

13 A. Yes, that's right.

14 Q. When you went to the hospital for that infection in your
15 legs, was that recently or a long time ago?

16 A. No, that was recently.

17 Q. When did that happen?

18 A. Well, that happened on 1/10/22.

19 Q. In the year 2022; correct?

20 A. Uh-huh.

21 Q. Mr. Cruz, one last question, when you do see Dr. Win, does
22 he have a medical file with him?

23 A. So that day was a Saturday and I had lots of pain and my
24 legs were swollen. So it was a nurse that I saw that day and
25 she was the one that sent me somewhere on the outside of the

N28CallH

Rivera-Cruz - Recross

1 facility, but she spoke to Dr. Win on the phone first and she
2 told him what I had.

3 Q. Thank you. Forget about going to the hospital for a
4 second. Generally, when you see Dr. Win for an appointment,
5 where do you see him?

6 A. His office.

7 Q. Does he have or are you aware of whether he has a paper
8 file or a chart of your medical history when he sees you?

9 A. Yeah, that's right. So he always -- for anybody that goes
10 to see him, he has the person's record ready and he opens it up
11 to see it.

12 MR. MORRISON: Thank you, Mr. Rivera-Cruz. Nothing
13 further.

14 THE COURT: Recross, counsel.

15 MS. THOMAS: Yes, I have brief recross.

16 If you wouldn't mind pulling up Plaintiffs'
17 Exhibit 59, please.

18 RECROSS EXAMINATION

19 BY MS. THOMAS:

20 Q. Sir, did you meet with your attorney, Josh Morrison, on
21 December 9th, 2022, at Shawangunk?

22 A. Can you please repeat that question.

23 Q. Sure. Of course. Sir, did you have a meeting with your
24 attorney, Josh Morrison, on December 9th, 2022?

25 A. Yes.

N28CallH

Rivera-Cruz - Recross

1 Q. And was there a translator present at that meeting?

2 A. Yes.

3 Q. We're now looking at Plaintiffs' Exhibit 59, and you
4 testified that you recognize this document; correct?

5 A. Yes.

6 Q. And did you sign this document?

7 A. Well, no, I don't remember so well.

8 MS. THOMAS: If we could please scroll to the last
9 page of this document.

10 MS. AGNEW: Your Honor, this is our electronic
11 version, he signed the one that was filed on the docket.

12 MS. THOMAS: I understand that. We are trying to make
13 a record and demonstrate that the document that was filed on
14 the record is in English and that was signed by
15 Mr. Rivera-Cruz, this document is in Spanish. And I'm trying
16 to establish how this came to be.

17 MS. AGNEW: Okay. Have fun.

18 MS. THOMAS: I don't appreciate the commentary.

19 THE COURT: Okay, boys and girls, let's go.

20 Q. Sir, do you see your signature anywhere on this page?

21 A. No.

22 Q. And during your meeting on December 9th, 2022 with
23 Mr. Morrison, did you sign a declaration?

24 A. No.

25 Q. Did you sign a document on December 9th, 2022, with your

N28CallH

Moronta - Direct

1 counsel present?

2 A. No, I haven't signed.

3 MS. THOMAS: No further questions, your Honor.

4 THE COURT: Thank you. Redirect, counsel?

5 MR. MORRISON: No, your Honor, nothing based on that.

6 THE COURT: Thank you.

7 MS. AGNEW: Thank you, Mr. Cruz.

8 THE WITNESS: Okay. Thank you. So we're done?

9 MS. AGNEW: We're done. Yes, sir.

10 THE COURT: You are excused, sir.

11 THE WITNESS: Okay. That's fine.

12 (Witness excused)

13 THE COURT: Mr. Moronta, would you give your attention
14 to Ms. Phillips, please.

15 JULIO MORONTA,

16 called as a witness by the Plaintiffs,

17 having been duly sworn, testified as follows:

18 THE DEPUTY CLERK: Please state your name and spell it
19 for the court reporter.

20 THE WITNESS: Julio Moronta, M-o-r-o-n-t-a.

21 DIRECT EXAMINATION

22 BY MR. MORRISON:

23 Q. Good afternoon, Mr. Moronta. How are you doing?

24 A. Good afternoon. Somewhat better.

25 Q. How old are you?

N28CallH

Moronta - Direct

1 A. 55.

2 Q. What current correctional facility do you live in?

3 A. In Eastern.

4 Q. How long have you been in Eastern Correctional Facility?

5 A. I will be making four years here now.

6 Q. When did you first become incarcerated with the New York
7 State Department of Corrections?

8 A. In 2008.

9 Q. In 2008, were you in the Department of Corrections or were
10 you in a county jail?

11 A. No, I was still in Rikers Island.

12 Q. When did you leave Rikers Island and come to your next
13 facility?

14 A. In 2010.

15 Q. When you arrived in 2010 to your next facility, what
16 facility was it?

17 A. Clinton.

18 Q. When you arrived at Clinton, did you have any medical
19 conditions that were causing you pain or discomfort?

20 A. Yes.

21 Q. And can you describe what those were?

22 A. Yes, I was feeling a lot of pain on my back always.

23 Q. Did that pain have any effect on your daily life that you
24 felt?

25 A. Yes, sir.

N28CallH

Moronta - Direct

1 Q. What was that?

2 A. Well, I was barely able to sleep. In fact, I still can't
3 really sleep because of the sharp pain in my lower back.

4 Q. When you were in Clinton, did any of the medical providers
5 provide you any medication to treat that pain you were having
6 in your back?

7 A. No, I don't think they prescribed it, no.

8 Q. How long were you in Clinton?

9 A. I spent two years in Clinton, two-plus years.

10 Q. Do you recall ever being prescribed, while you've been in
11 DOCCS custody, a medication called Neurontin?

12 A. Yes, sir.

13 Q. Do you recall about what time or what year you were
14 prescribed Neurontin?

15 A. I don't recall the exact date, but I did use it for about a
16 year or so.

17 Q. Do you remember what correctional facility you were in when
18 you were being prescribed Neurontin?

19 A. Yes, Sullivan.

20 Q. Prior to being in eastern, what correctional facility were
21 you in?

22 A. Sullivan.

23 Q. How long were you living at Sullivan Correctional Facility?

24 A. About seven years.

25 Q. Do you remember who your provider was at Sullivan when you

N28CallH

Moronta - Direct

1 were receiving Neurontin?

2 THE INTERPRETER: Your Honor, may the interpreter to
3 ask the witness to repeat his answer?

4 THE COURT: Yes, ma'am.

5 A. Yes. Well, it was Mrs. Maria Diaz.

6 Q. How did the Neurontin medication affect the pain you were
7 in?

8 A. Well, I used to feel somewhat better. It would kind of put
9 me to sleep and it would calm the pain. It wasn't like it
10 would completely go away either.

11 Q. When you were on Neurontin, were you able to sleep at
12 night?

13 A. Somewhat, yes.

14 Q. Did there come a time when your Neurontin medication and
15 prescription was taken away from you?

16 A. Yes, sir.

17 Q. Can you describe to the Court how you learned your
18 Neurontin medication was being taken away from you?

19 A. No. So I went to the clinic and the female doctor there,
20 when I complained about the medication being taken away, she
21 told me that, from security, she had been told that she can no
22 longer prescribe that medication.

23 Q. So is it true that you learned that your medication was
24 taken away before you spoke to your provider?

25 A. Yes, sir.

N28CallH

Moronta - Direct

1 Q. At any point in time, did you ask that you stop taking the
2 Neurontin medication.

3 THE INTERPRETER: Counsel, would you please repeat for
4 the interpreter?

5 Q. At any point in time prior to it being discontinued, did
6 you ask for the medication to be stopped?

7 A. No, sir, never.

8 Q. What were the effects of your pain and symptoms after the
9 Neurontin medication was stopped?

10 A. Even more pain, more pain even, because the medication that
11 was being given to me had no effect whatsoever.

12 Q. Mr. Moronta, have you ever been accused of hoarding
13 Neurontin medication before?

14 A. No, sir.

15 Q. Have you ever been accused of cheeking Neurontin medication
16 or any medication before?

17 A. No, sir.

18 Q. Is have you ever been accused of selling Neurontin
19 medication before while in custody?

20 A. Never. Never.

21 Q. Mr. Moronta, have you ever received a ticket by the
22 Department of Corrections while you've been incarcerated?

23 A. No, sir, in the years that I have been incarcerated, I have
24 never gotten a ticket.

25 Q. After they discontinued your Neurontin medication while in

N28CallH

Moronta - Direct

1 Sullivan, were you prescribed any alternative medications for
2 your pain?

3 A. Yes, they used to give me something that had no effect at
4 all.

5 Q. Do you remember being prescribed a prescription called
6 Elavil before?

7 A. I think so.

8 Q. Did that help with your pain?

9 A. No. No. No.

10 Q. How about a medication called Cymbalta?

11 A. I really don't remember that one. But anytime that
12 anything was prescribed to me, I would then go back and I would
13 tell them to give me something else because that was not really
14 having any effect.

15 Q. Mr. Moronta, did you ever inform a medical provider or
16 medical staff that Neurontin did help you?

17 A. Yes, I did speak to Dr. Diaz about the fact that it did
18 help. It wasn't like it completely got rid of the pain, not
19 fully, but it did help, yes.

20 Q. And what was the response you received from Dr. Diaz when
21 you told her that?

22 A. Well, what Dr. Diaz answered or her response to me before
23 leaving was that, well, that pain that you have is because your
24 bone is bent, but that was never something that they had told
25 me before, but she said, you know, your bone is bent and that

N28CallH

Moronta - Direct

1 is what the x-rays and the MRI show.

2 Q. Did Dr. Diaz speak Spanish?

3 A. Yes, sir.

4 Q. When you met with Dr. Diaz, you were communicating with
5 they're her in Spanish; correct?

6 A. Yes.

7 Q. Did she ever inform you why she took you off Neurontin and
8 wasn't prescribing it anymore?

9 A. Well, what she told me was that they were just not
10 prescribing it anymore, that the administration was not
11 prescribing it anymore.

12 Q. Do you remember roughly what year that was?

13 A. Well, that was before she left the place, I don't quite
14 remember the year, but maybe approximately 2013, 2014. I
15 really don't remember the year well.

16 Q. When you were transferred to Eastern Correctional Facility
17 where you're at now, were you assigned a specific provider?

18 A. Yes, I found the same doctor, Dr. Guzman, who is the same
19 doctor that was there, I also ran into him here.

20 Q. So after Diaz left Sullivan, Dr. Guzman became your
21 provider at Sullivan?

22 A. No. No. Well, Dr. Guzman had already always been the
23 medical provider there. There was another female doctor, as
24 well, whose name I don't remember.

25 Q. So in Eastern, who is your provider right now?

N28CallH

Moronta - Direct

1 A. Dr. Guzman.

2 Q. Does Dr. Guzman speak Spanish?

3 A. No, sir.

4 Q. Do you speak English at all?

5 A. No.

6 Q. So when you have a medical appointment with Dr. Guzman, how
7 do you communicate with each other?

8 A. Well, so sometimes I find someone who would write a note in
9 English for me so that I -- and then I give it to him.

10 Sometimes, seldomly, not frequently, they put an interpreter on
11 the phone.

12 Q. Have you ever communicated to your provider through a note
13 written by someone else on your behalf or through the language
14 line about the pain you were in?

15 A. Yes, sir.

16 Q. Have you discussed or attempted to communicate with medical
17 staff about the effects Neurontin has on your pain?

18 A. Yes, I have, but they never pay any mind.

19 Q. Do they ever tell you why you are not being prescribed
20 Neurontin?

21 A. No, they haven't said anything to me.

22 Q. Have you received any type of treatment for your pain while
23 at Eastern Correctional Facility?

24 A. Yes, they have given me injections, they have given me a
25 couple of injections for the pain.

N28CallH

Moronta - Direct

1 Q. And how do those injections affect your pain, are they
2 effective?

3 A. Yes. So I have two or three months of relief. I'm just --
4 I'm calm, yes.

5 Q. How long between injections is the time?

6 A. I don't understand that.

7 Q. Neither did I.

8 How long does it take from your injection
9 appointments, one month, two months, three months?

10 THE INTERPRETER: The interpreter, your Honor, needs
11 to ask the witness to repeat the last part.

12 THE COURT: Yes, ma'am. Go ahead.

13 A. So, well, I mean, three months or so. It's not like
14 they're continuous. They're not continuous at all. In fact, I
15 haven't had one for years now. I have requested them, but
16 they're not given to me.

17 Q. When was the last time you remember having injections?

18 A. Oh, it's been a year-plus or even two years.

19 Q. Do you recall ever being sent to a specialist by a doctor
20 by the name of Omar Hussein?

21 A. Yes.

22 Q. Do you remember that specialist recommending to you to be
23 prescribed a muscle relaxant?

24 A. I don't remember, no, because it's the officer who takes
25 the papers and the doctor is the one who sees it, we don't see

N28CallH

Moronta - Direct

1 it. We don't know anything.

2 Q. What is the medication you are on right now, if anything,
3 for pain?

4 A. They're giving medication, but I haven't received it for
5 several days because I have to go to Albany. Actually, I'm at
6 the clinic right now. I have to go to Albany tomorrow.

7 Q. What medication are you receiving right now?

8 A. I really don't remember. My mind can't keep track of it
9 because there's many medications that I take.

10 Q. How about medications for pain, do you recall any?

11 A. No, sir.

12 Q. What are you going to Albany for, if you know?

13 A. I thought I was going for my arm, but also, I have a hernia
14 that came back after I've had surgery for it.

15 Q. What is wrong with your arm?

16 A. When I had the surgery, it locks, and I also feel quite a
17 bit of pain.

18 Q. How long has that been going on?

19 A. Over two years.

20 Q. Have you received any medication for that pain?

21 A. No, they gave me the same medication that I get for my
22 back. In recent days, I got an MRI and they told me that I had
23 to get some followup from a professional.

24 Q. Mr. Moronta, do you know when you are expected to be
25 released from prison, if at all?

N28CallH

Moronta - Cross

1 A. I got 33, but I'm doing 25 to life.

2 MR. MORRISON: Thank you, Mr. Moronta. I have no
3 further questions. I wish you the best of luck on your medical
4 trip tomorrow.

5 THE WITNESS: Thank you, sir.

6 THE COURT: Cross examination, counsel, please.

7 MS. THOMAS: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MS. THOMAS:

10 Q. Good afternoon, Mr. Moronta. I have a few questions for
11 you today.

12 A. Okay.

13 Q. Are you able to speak English to any degree?

14 A. No, I can't communicate like that, no.

15 Q. Are you able to read English to any degree?

16 A. No.

17 Q. And are you able to write in English to any degree?

18 A. No.

19 Q. You had testified earlier that you were housed at the
20 Sullivan Correctional Facility; correct?

21 A. Yes.

22 Q. And during what years were you housed at the Sullivan
23 Correctional Facility?

24 A. Seven years.

25 Q. And did you enter Sullivan in 2010?

N28CallH

Moronta - Cross

1 A. No, Clinton. I went to Clinton in 2010.

2 Q. And what year did you enter Sullivan Correctional Facility?

3 A. Around '12 or '13.

4 Q. And you had testified earlier that you were prescribed
5 Neurontin while you were at Sullivan; is that correct?

6 A. Yes, sir.

7 Q. And what year were you prescribed Neurontin?

8 A. '15, '16, around then.

9 Q. Is it your testimony today that you were on Neurontin for
10 approximately one year?

11 A. Yes.

12 Q. Is it your testimony that you were on Neurontin for one
13 year during the time of approximately 2015 and 2016?

14 MR. MORRISON: Objection. Misstates his testimony.
15 He clearly doesn't know.

16 MS. THOMAS: I was asking for clarification. I
17 apologize. I will rephrase the question.

18 THE COURT: Yes, ma'am.

19 Q. So to confirm, sir, you were on Neurontin for approximately
20 one year; correct?

21 A. Yes.

22 Q. And to the best of your recollection, you believe that that
23 one year was during the years of either 2015 or 2016; is that
24 correct?

25 THE DEPUTY CLERK: Stop. Stop. We have another

N28CallH

Moronta - Cross

1 facility on right now.

2 THE COURT: There are faces appearing on the screen.

3 MS. AGNEW: We think that's Dr. Veronica Ruiz, I'm
4 guessing. If we get to her testimony, it will not be until
5 late in the day. If she's not available, we will not be taking
6 it. I've conveyed that several times to the AG's office.

7 TECHNICAL ASSISTANT: Dr. Ruiz is here. Can you see
8 us?

9 MS. AGNEW: Ma'am, we have to get through the
10 testimony of a lot of other witnesses first. If we get to
11 Dr. Ruiz, it cannot be until late in the afternoon. Well,
12 that's fine. If she's not available, she's not available.
13 Okay?

14 TECHNICAL ASSISTANT: Okay.

15 MS. AGNEW: So we'll excuse her. We're going to
16 withdraw her subpoena. We do thank her for her time and trying
17 to be available.

18 TECHNICAL ASSISTANT: No problem. Thank you.

19 I'm sorry, your Honor. We tried.

20 THE COURT: The question that I have on the table is:
21 "Q. So to confirm, sir, you were on Neurontin for
22 approximately one year; correct?

23 "A. Yes.

24 "Q. And to the best of your recollection, you believe that
25 that one year was during the years of either 2015 or 2016; is

N28CallH

Moronta - Cross

1 that correct?"

2 THE COURT: Sir, can you answer that question, please.

3 A. Yeah, I don't remember very well, but it was when I arrived
4 to Sullivan, during that time.

5 Q. After that one-year period that you were on Neurontin, was
6 there any other period of time that you were on Neurontin?

7 A. No.

8 Q. Is it your testimony today that the Neurontin was
9 prescribed to treat lower back pain?

10 A. Yes.

11 Q. And for the one year that you took Neurontin, did that cure
12 your lower back pain?

13 A. It didn't cure it, it improved it somewhat, but it wasn't
14 cured, I still feel the pain.

15 Q. When you were taken off of Neurontin, did your provider
16 tell you that you were taken off of Neurontin due to any
17 policy?

18 A. Yeah, they said that, that the administration had removed
19 it, they were not prescribing it anymore.

20 Q. So in approximately 2016 when you were taken off of
21 Neurontin, you were told that there was a policy, that was the
22 justification for your removal of Neurontin; is that correct?

23 A. Yes.

24 Q. Sir, are you currently taking Cymbalta?

25 A. Excuse me?

N28CallH

Moronta - Cross

1 Q. Sir, are you currently prescribed the medication Cymbalta,
2 also known as duloxetine?

3 A. I think so. I think that's it.

4 Q. Do you have an understanding as to what the Cymbalta does
5 for you?

6 A. No, I really don't understand actually because it doesn't
7 create any effect.

8 Q. Sir, isn't it true you have seen pain management
9 specialists in the last 12 months?

10 A. No, I don't think so, not for the pain.

11 Q. But you've seen pain management specialists since 2010; is
12 that correct?

13 A. Yes.

14 Q. Would you agree that you've seen pain management
15 specialists in the year 2022?

16 A. No, I don't remember. I don't think I saw them, no.

17 Q. Sir, did your primary care provider recommend that you go
18 see pain management again this past fall?

19 A. No, not yet. It's in process.

20 Q. But it was recommended for you; is that correct?

21 A. Yeah, I was referred for that, but when they did the MRI on
22 my arm and to get an injection, but I still haven't been
23 referred.

24 Q. Sir, you had testified that today, you're preparing for a
25 procedure in Albany; is that correct?

N28CallH

Moronta - Cross

1 A. Yeah, I think it's for my colon. Now I have to go and
2 drink this water that I have to drink to clean out my
3 intestine.

4 Q. Thank you, sir. Understood.

5 Will you still be attending your medical procedure
6 this week?

7 A. Yeah, tomorrow, God willing. I'm in the middle of it.

8 Q. Sir, when did you first become involved with this
9 litigation?

10 A. I don't remember well when it was. I don't know.

11 Q. Did you become involved in this litigation within the last
12 year?

13 A. No, in '22, yes.

14 Q. You became involved in this litigation in 2022; is that
15 correct?

16 A. Yes.

17 Q. Do you recall what month in 2022 you became involved in
18 this litigation?

19 A. I don't remember very well, but at the beginning, yes.

20 MS. THOMAS: Nothing further, your Honor.

21 THE COURT: Thank you. Redirect, counsel?

22 MR. MORRISON: Nothing based on that. Thank you,
23 Judge.

24 THE COURT: Thank you. Mr. Moronta, you're excused,
25 sir. Thank you.

N28CallH

Moronta - Cross

1 THE WITNESS: Thank you.

2 (witness excused).

3 THE COURT: What do you want to do next, friends?

4 MS. AGNEW: So I think we need to move the video back
5 to Shawangunk.

6 MS. KILEY: Your Honor, one administrative issue.

7 THE COURT: Yes, ma'am.

8 MS. KILEY: We understand that plaintiffs are holding
9 off on Dr. Ruiz who just showed up on the screen, however, we
10 were already planning to call Dr. Ruiz on rebuttal. She leaves
11 at 2:00 p.m. So we would like to ask the Court if we could
12 call her out of turn since she's not going to be available
13 after 2:00 p.m. and she's not available tomorrow.

14 THE COURT: What do you want me to do with the guy
15 who's been waiting at Shawangunk?

16 MS. KILEY: My understanding is that when the screen
17 showed up for Shawangunk, Dr. Ruiz was sitting right there.

18 MS. AGNEW: She wasn't at Shawangunk.

19 THE COURT: Could you confer off the record, tell me
20 what you want to do, please.

21 MS. AGNEW: We just withdrew our subpoena.

22 MR. NOLAN: She's ready to go for us. So would it
23 take about 20 minutes?

24 MR. KEANE: 1:00 p.m.

25 MS. AGNEW: We have people at Shawangunk, including

N28CallH

Moronta - Cross

1 Dr. Win. So it's our case. I'm not trying to jeopardize this.
2 We were going to take her late in the day if we got to her. We
3 would like to get Shawangunk done and they can call her for
4 their rebuttals tomorrow.

5 MS. KILEY: She's not available tomorrow, and we also
6 called Dr. Dockery out of turn, so we would ask for the same
7 courtesy.

8 MS. AGNEW: Mr. Dockery testified because you weren't
9 ready to go with your witnesses and he was sitting in this
10 room.

11 MS. KILEY: Dr. Ruiz is sitting in the room at
12 Woodbourne waiting to go, as well.

13 THE COURT: All right. How long is the prisoner
14 witness going to be?

15 MS. AGNEW: We have Dr. Win and then we have three
16 more prisoners at Shawangunk. If we're going to do Ruiz, she's
17 going to take me a long time on cross. That means all our
18 Shawangunk people don't get to testify, your Honor, and I have
19 a problem with that.

20 THE COURT: We're not going to do that. I don't
21 understand why she's not available tomorrow. That's the
22 rebuttal day.

23 MS. KILEY: She's leaving the country.

24 MS. AGNEW: This is the first we are hearing that they
25 were going to call her. Your Honor asked several times if they

N28CallH

Win - Direct

1 were calling a rebuttal witness, they said it depends.

2 THE COURT: You said half an hour, two people.

3 By the way, we have a sentencing that's going to
4 happen at some point in the middle here.

5 Let's go with the prisoner who was in line first,
6 whoever that was.

7 Ms. Phillips.

8 HLA PE WIN,

9 called as a witness by the Plaintiffs,

10 having been duly sworn, testified as follows:

11 THE DEPUTY CLERK: Please state your name and spell it
12 for the record.

13 THE WITNESS: Hla Pe Win, medical doctor, Shawangunk
14 Correctional Facility.

15 THE COURT: Spell your first name for us, sir.

16 THE WITNESS: H-l-a P-e, last name W-i-n.

17 DIRECT EXAMINATION

18 BY MS. AGNEW:

19 Q. Good afternoon, Dr. Win. First, I want to very quickly go
20 over your educational background for the Court.

21 A. I came from (technical interruption) I graduated in 1990.
22 And I finished my residency in 1996 from (technical
23 interruption) Institute. (Technical interruption).

24 Q. Dr. Win, forgive me, just like the other day, I'm going to
25 ask you to slow down and I'm going to go a little slower

N28CallH

Win - Direct

1 myself. You and I both speak fast. Okay?

2 A. Sure.

3 Q. Isn't it true, sir, you are a licensed physician in New
4 York State?

5 A. Correct.

6 Q. And you're certified. Do you have a board certification?

7 A. Yes, I do.

8 Q. What is that in?

9 A. Family medicine.

10 Q. And isn't it true, sir, you worked for the office of mental
11 health for several years as a physician; correct?

12 A. Correct.

13 Q. And then you came to the New York State Department of
14 Corrections; correct?

15 A. Correct.

16 Q. And you've only ever worked at Shawangunk Correctional
17 Facility; right?

18 A. Yes.

19 Q. And right now, you serve as the facility health services
20 director at Shawangunk; correct?

21 A. Correct.

22 Q. And can you tell the Court, approximately how many patients
23 are housed at Shawangunk?

24 A. It's around 400 inmates here.

25 Q. And at Shawangunk, you have a wheelchair unit; correct?

N28CallH

Win - Direct

1 A. Correct, we do.

2 Q. And that houses inmates with disabilities; correct?

3 A. Correct.

4 Q. And are you right now the only doctor or is Dr. Lee still
5 coming in sometimes?

6 A. He doesn't come in anymore.

7 Q. Are there any other providers coming in to help out?

8 A. Yes. There is nurse practitioners and physician
9 assistants. They come help us out when the facility arrange
10 it.

11 Q. Can you repeat that last part, sir. When do they come in?

12 A. When the facility arrange that.

13 Q. And it's true you don't arrange them; correct?

14 A. No, I don't.

15 Q. Sir, when you came into DOCCS, what year was that? Do you
16 recall when you started at DOCCS, the year?

17 A. February 2020.

18 Q. When you came in in February 2020, did there come a time
19 when you learned about the MWAP policy?

20 A. Yes.

21 Q. And what was explained to you in February 2020 about the
22 MWAP policy?

23 A. When certain medications are needed, you need to get
24 approval from regional medical director or covering physicians
25 of that position.

N28CallH

Win - Direct

1 Q. How did you go about getting approval for those
2 medications?

3 A. We have a form to fill out, we send it and they send
4 approval, and we submit it to regional authority, the policy.

5 Q. Did you then become aware, in February of 2021, that there
6 was a new policy?

7 A. There's a new policy, I don't know exact date, but there's
8 a policy change, yes.

9 Q. And can you tell us the substance of that policy change?

10 A. The medication (technical interruption) produced
11 potential -- we don't need that approval anymore.

12 Q. Sir, isn't it true between February of 2020 and February of
13 2021, you only submitted one MWAP request form before you
14 reassessed the plaintiffs in this case?

15 A. I cannot deny or confirm because I don't know how many
16 requests that I made.

17 Q. Do you recall, did it take you a long time to fill out an
18 MWAP request form?

19 A. I think it's one-page form. I am not positive. And
20 medications and stuff like that.

21 MS. AGNEW: Dr. Win, we need to take a break so that
22 the Judge can take care of some business, and I apologize.
23 Let's come back in about 25 minutes, Dr. Win. I apologize.

24 THE WITNESS: Okay. 1:30.

25 (Recess)

N28CallH

Win - Direct

AFTERNOON SESSION

1:37 p.m.

THE COURT: I apologize for the interruption, everyone, but business has to be done.

Thank you. Would you like to continue, Ms. Agnew.

MS. AGNEW: Sure.

BY MS. AGNEW:

Q. Dr. Win, when we were talking, we were speaking about the period of time when you on-boarded to DOCCS and the MWAP policy.

I want to ask you, when you first started at Shawangunk, was there a rule that a patient could only be administered narcotics if they were housed in the infirmary?

A. It's not true.

Q. When you started at Shawangunk, was that the rule?

A. It's not.

Q. So it was not the rule when you started at Shawangunk?

A. It's not.

Q. We're going to talk now about policy 1.24A. We spoke about it a few weeks ago at your deposition. Do you recall your deposition?

A. I do.

Q. We're going to put that on the screen.

Did you bring the documents that I sent you, sir?

A. The box?

N28CallH

Win - Direct

1 Q. Yes.

2 A. I have it here. Do you want me to open it?

3 Q. I do. Another good rule follower.

4 A. I was following the rule not to open it until you're told
5 to do so.

6 MS. AGNEW: We can take this down, then.

7 Q. I think it will be better for you, Dr. Win. It's like
8 Christmas, only bad.

9 A. What do you want me to do.

10 Q. There is a pile of documents in there. Can you pull them
11 out. There should be a page that has an exhibit sticker on it
12 that says P1, and it's a copy of policy 1.24A. Wonderful.

13 MS. AGNEW: For the record, your Honor, that's already
14 been admitted into evidence as D2.

15 THE COURT: Yes, ma'am.

16 Q. Dr. Win, are you familiar with policy 1.24A?

17 A. Yes, I am.

18 Q. Since the time I took your deposition, have you discussed
19 your testimony with anyone?

20 A. Nope.

21 Q. Can you tell me, Dr. Win, when did you first become aware
22 of policy 1.24A?

23 A. The starting date, as per the document, February 8, 2021.
24 So it must be before that because we start using the policy on
25 February 8, 2021.

N28CallH

Win - Direct

1 Q. Do you recall how you received a copy of the policy?

2 A. It must be a reminder that what I relied on is there is an
3 intranet healthcare policy and policy in our system. Any
4 document, any let's say policy, 1.24, I can go there and look
5 at it. That's where the most current policy is that we can
6 remove, we can pull it, we can read it.

7 Q. That's on your computer; right?

8 A. I think it's a government computer. I don't know. It's
9 somewhere in the server.

10 Q. Sir, do you get an alert when there is a new policy in the
11 health services policy manual?

12 A. I do.

13 Q. How do you get the alert?

14 A. I'm not positive, but most likely we get an email from our
15 administration or from somewhere. I'm aware that there is a
16 new policy there and we read it and we try to understand that.

17 Q. So sitting here today, sir, since policy 1.24A came out, do
18 you follow the policy?

19 A. I did.

20 Q. So I just want to go over the important parts of the
21 policy, at least from my perspective, and make sure you and I
22 understand the same thing.

23 Under procedure, it says "Each patient with a chronic
24 pain condition will be given the problem list code 338 pain
25 management." Right?

N28CallH

Win - Direct

1 A. Correct.

2 Q. Does every patient in your facility who suffers from a
3 chronic pain condition have the problem list code 338?

4 A. I cannot say every patient, but in our facilities, we are
5 doing the code as was supposed to be.

6 Q. Did you talk with someone who told you that you should
7 start adding the codes?

8 A. Talk to someone? We have nurses, we have RN, we have a
9 regional medical director. We update our problem base as much
10 as up to date. I don't know if you talk to someone. Maybe my
11 nurses and my nurse administrator mostly.

12 Q. So have you directed your nurses and your nurse
13 administrators to go through all the charts and make sure that
14 every patient who suffers from a chronic pain issue is coded
15 338?

16 A. We try our best.

17 Q. That wasn't my question. I appreciate that.

18 Have you directed them to go through all the charts
19 and add the code?

20 A. I did not. I did not.

21 Q. So let's go back to the policy 1.24A, in the third
22 paragraph down, after procedure, it says "Specialty consults
23 will be ordered as indicated for the evaluation and care of
24 chronic pain patients. In the event the PCP does not accept
25 the recommendations of the specialist, the PCP will document in

N28CallH

Win - Direct

1 AHR regarding the reasons why the PCP does not accept the
2 recommendations."

3 Do you understand that part of the policy?

4 A. I do.

5 Q. Have you been following that part of the policy since it
6 was promulgated?

7 A. I did.

8 Q. Now, the next paragraph after the bullet says "Pain
9 management medication should only be discontinued after a
10 provider has met with the patient, discussed the issues
11 regarding the use of the medication, analyzed the patient's
12 situation, and subsequently determined that it is in the best
13 interests of the patient for the medication to be
14 discontinued."

15 Have you been following that part of the policy
16 consistently since it was promulgated?

17 A. I did.

18 Q. So I want to look at the records. Are you aware that there
19 are some patients in your facility that are a part of this
20 lawsuit?

21 A. Yes, I do.

22 Q. Do you know who those patients are?

23 A. I don't know exactly how many are, but I kind of know a
24 few.

25 Q. Do you recall a time in late 2020 when you conducted

N28CallH

Win - Direct

1 reassessments of some of those patients?

2 A. I don't understand your question.

3 Q. Let's do this, can you find the document there, it's
4 labeled P10, and it's for Rashid Rahman. There is a package of
5 medical records.

6 A. P10, yup.

7 Q. Dr. Win, I'm going to tell you for the record, those aren't
8 complete. We have just taken out what we feel are the most
9 important things. Okay?

10 A. Sure.

11 Q. Are you familiar with Mr. Rahman?

12 A. I kind of know who he is.

13 Q. Do you recall him being a patient of yours?

14 A. Yes, I do.

15 Q. So I want you to look at page 282, and it's in the bottom
16 center. It says R. Rahman, 282.

17 MS. AGNEW: Your Honor, I'll move all these into the
18 record when I'm done.

19 THE COURT: So you say.

20 A. 282, okay.

21 Q. Do you recognize that document, Dr. Win?

22 A. That's my handwriting.

23 Q. Do you remember when you did these reassessments?

24 A. I don't remember, but I can read it.

25 Q. Can we agree you did this reassessment on November 10th of

N28CallH

Win - Direct

1 2020?

2 A. Yes, I did.

3 Q. Do you remember, when you did this reassessment, did anyone
4 speak with you and tell you how to conduct the reassessment?

5 A. This is the form that I fill out. So it was the form
6 initially that I would fill out. That's what I did.

7 Q. So if we look at page 283, the second page, the last
8 question was, do you believe that it might be beneficial to
9 initiate a trial of an MWAP medication at this time.

10 A. I put not applicable.

11 Q. Why did you put it was not applicable?

12 A. There is a scenario there --

13 Q. Doctor, can you move forward a little bit. It's very hard
14 to hear your voice.

15 A. At that time, my clinical assessment of this incarcerated
16 individual has other medication so that MWAP medication is not
17 needed. That's what I meant on that page.

18 Q. What other medication was he getting?

19 A. If you have the record, show it to me because I cannot
20 remember each and every details of these medication.

21 Q. So did Mr. Rahman tell you that he was being treated
22 effectively with the medication he was on?

23 A. I (technical interruption) could you repeat the question.

24 Q. Did Mr. Rahman tell you, when you completed this form, that
25 he was not suffering from any pain?

N28CallH

Win - Direct

1 A. I have to look at that corresponding AHR, the recent --
2 around that time, what are the complaints, what are the things
3 that you would see, what are the reasons I saw him, I need to
4 see those health records, AHR, that's what we call.

5 Q. When you completed this form, were you sitting with
6 Mr. Rahman?

7 A. No. I take it back. I am not positive.

8 Q. I want you to look now at page 297. Are you familiar with
9 this document, Dr. Win?

10 A. Yes.

11 Q. What is this document?

12 A. This is form number 3194 New York State Department of
13 Corrections, request and report of consultation.

14 Q. Is that your handwriting on the bottom of the document?

15 A. Bottom is mine, correct.

16 Q. Can you read that for us.

17 A. Inmate, they said we shouldn't do it. Incarcerated
18 individual was seen in the ER, Saint Luke's. Diagnosis, prior
19 neuropathy, numbness of the left arm, using wheelchair,
20 self-pushing. Follow up for prior neuropathy. Neurologic PRN,
21 CHR 4/4/21. And that's at 4/12/21 I signed it. And there is
22 something there, I cannot read it.

23 Q. Let's look at 296.

24 A. Okay.

25 Q. I believe that's your corresponding AHR; correct?

N28CallH

Win - Direct

1 A. Correct.

2 Q. And what did you write there?

3 A. Inmate was seen at Saint Luke's ER for numbness of the
4 left. Diagnosis peripheral neuropathy of -- with EMG
5 suggestion. Inmate was seen and evaluated by physical medicine
6 and rehab on March 8th, 2019. History of laminectomy with
7 wheelchair use since June 2016. With appropriate -- I think
8 care as reasonable by PNMR. PNMR is physical medicine and
9 rehab. Inmate was -- has signed against medical advice for
10 observation in infirmary due to -- this is a copy, so it's not
11 clear as the original.

12 Q. Dr. Win, that's okay. I'm going to stop you.

13 Looking at your notes, isn't it true that Mr. Rahman
14 was diagnosed with peripheral neuropathy at Saint Luke's ER;
15 correct?

16 A. As per document, it's not a new diagnosis. It's maybe a
17 current diagnosis, I cannot confirm that, but he was seen in
18 the ER, correct.

19 Q. This also notes he has a history of a laminectomy; correct?

20 A. Yes, I wrote that.

21 Q. And he uses a wheelchair; correct?

22 A. He uses a wheelchair, correct.

23 Q. On this date, he didn't want to go into the infirmary for
24 observation; right?

25 A. Unfortunately, he was at infirmary for 10 days recently and

N28CallH

Win - Direct

1 he was discharged I think yesterday or the day before
2 yesterday. He was at the infirmary for 10 days.

3 Q. Yes, I understand that. He was in the infirmary for COVID
4 quarantine; right?

5 A. That's correct.

6 Q. But what I'm talking about is in April of 2021, you noted
7 that against medical advice, he didn't want to be in the
8 infirmary?

9 A. So the clinical situation is once any patient has acute
10 medical issues, such as acute pain, severe pain, as a
11 clinician, we observe in the higher level of care, which the
12 nurse to patient ratio is a lot more than the GP, so that we
13 can provide higher level of care and observe. That is a reason
14 that I suggested or recommended being in the infirmary for
15 better patient-nurses ratio and more higher level of care.

16 Q. Let's look at 299, Dr. Win.

17 A. Okay.

18 Q. Do you see your initials somewhere on 299?

19 A. Yes, I saw that.

20 Q. And when you initial a consult, that means you read it;
21 correct?

22 A. Correct.

23 Q. And isn't it true that Dr. Hussein, in his plan of care,
24 said, one, schedule for cervical epidural steroid injection;
25 two, left C -- I'm going to mess this up, but those are

N28CallH

Win - Direct

1 vertebrae; right?

2 A. Correct.

3 Q. And then three, consider using the Tramadol.

4 A. Correct.

5 Q. So under that, you wrote for acute pain, RX will admit to
6 infirmary 5 to 7 days for Tramadol; correct?

7 A. You can interpret whatever the way that you want, but in
8 this consult, (technical interruption) is considered, and the
9 first line of treatment is epidural steroid injection. So that
10 is the treatment that pain management recommended. If I had no
11 other choice, that's why (technical interruption) as a pain
12 management instead of writing Tramadol 50 BID or whatever, he
13 writes "consider Tramadol." There are four or five different
14 types of medication that we have for the pain treatment there.
15 Whenever I treat any pain management patient under my regular
16 care and practice, I consider all other options.

17 Q. I understand that. Dr. Win, I need you to answer my
18 questions. Okay?

19 A. Okay.

20 Q. I do appreciate your narrative.

21 What's the second line of Dr. Hussein, what did he
22 write next to 2?

23 A. Next to 2 is consider -- hang on.

24 Q. No, No. 2. It says left --

25 A. Oh, No. 2. Left C4 -- C5, I think, C8 and C7, facet block.

N28CallH

Win - Direct

1 Q. That's not an alternative to the cervical epidural steroid
2 injection, that's more directions; correct?

3 A. I cannot interpret the thinking process by the pain
4 specialist. If you want to ask that type of specialized
5 specialist recommendation, you have to ask the pain management
6 doctor, Dr. Hussein.

7 Q. I want to know, sir, why didn't you reuse Tramadol for
8 Mr. Rahman?

9 A. As I told you before, he consider his different. As soon
10 as I get this, I submit it for the procedure, which you can see
11 that with the checkbox there. So we would try to get that
12 thing done as soon as possible if the inmates are suffering.
13 At the same time, we would treat the written -- the exact word
14 is consider. So that was what I did.

15 Q. When did Dr. Hussein tell you that "consider" is not a
16 recommendation?

17 A. You can ask Dr. Hussein why he didn't write Tramadol
18 50 milligram twice a day or three times a day instead of
19 consider. Consider mean if I have no other choice, if I look
20 at other options there, I can consider it. That's how I
21 interpret that.

22 Q. So if you look at 304, that's the next AHR record in
23 Mr. Rahman. Do you see anywhere where you explain why you were
24 not prescribing Tramadol?

25 A. I cannot answer this question because the recommendation, I

N28CallH

Win - Direct

1 followed that, and I told you already, it was considered. If
2 he has an acute medical condition there, I will see him, I will
3 evaluate him, I will do whatever level of care that I can
4 provide in my facility. If I cannot, I have an option to send
5 to further evaluations or further treatment and other higher
6 level of care.

7 THE COURT: Dr. Win, the question that counsel asked
8 was:

9 "Q. Do you see anywhere where you explain why you were not
10 prescribing Tramadol?"

11 THE COURT: Looking at 304, can you answer that
12 question, please.

13 THE WITNESS: Your Honor, the exact word was consider.

14 THE COURT: That's not the question, sir. That's not
15 the question. The question is, looking at the document that's
16 marked 304, do you see anywhere where you explain why you were
17 not prescribing Tramadol. That's the question.

18 THE WITNESS: I don't have it.

19 Q. Dr. Win, please turn to page 317. Do you recognize that
20 document, Dr. Win?

21 A. I don't.

22 Q. So sitting here today, you don't remember ever receiving
23 this letter from me?

24 A. I don't.

25 Q. Let's turn to 322, Dr. Win. Can you tell us, is that your

N28CallH

Win - Direct

1 handwriting on 322?

2 A. Pain management followup. Pain management will request RI
3 on 4/27/21, referral number 20310653, refused. Pain management
4 refused by referral number 2292291881, sent October 3, '22.

5 Q. So on October 3rd of 2021, you were putting in another
6 referral to pain management?

7 A. I guess what you said was 2022, not '21.

8 Q. I'm sorry. This is October 3rd of 2022; correct?

9 A. Correct.

10 Q. And you're sending him for a followup with pain management;
11 correct?

12 A. Correct.

13 Q. And then you say there that on April 27th of '21, he
14 refused?

15 A. That's what I said. Per policy, pain management need to be
16 arranged to follow up every three months with the pain
17 management. So I'm not sure when was the last time this
18 patient was seen by the pain management, but according to here,
19 he didn't go in April of 2021. So as a physician, treating
20 physician, I requested again to follow up with the pain
21 management.

22 Q. But he did go in April of 2021; correct?

23 A. See, I'm not positive. If you can find that, it might
24 be -- according to my reading here --

25 Q. Let's try 299, Dr. Win. So on 299, it's 4/16/21, and he

N28CallH

Win - Direct

1 went to pain management; correct?

2 A. Oh, so now I want to -- since I saw this one, he refused
3 me, not the pain management consult. He refused the spinal
4 cord injection. I don't see the --

5 Q. He didn't want to get the injections, right, he refused the
6 injections; correct?

7 A. As a clinician, what I'm saying is it's a note that we just
8 read in October 2022. I might refer to this refusal of this
9 injection, I might be. I am not 100 percent sure. The thing
10 is he went there on that day, 4/16/21.

11 Q. Between April of 2021 and October 3rd of 2022, why didn't
12 you restart Mr. Rahman's Tramadol prescription?

13 MS. KILEY: Objection. It was never established that
14 he was on Tramadol before this --

15 MS. AGNEW: His medical records are already in the
16 record for this case, your Honor, in fact on this motion.

17 MR. NOLAN: Why don't we enter the whole thing now
18 then?

19 MS. KILEY: It hasn't been established he was on
20 Tramadol beforehand.

21 THE COURT: Ms. Agnew.

22 Q. Dr. Win, I'm going to rephrase my question. When you
23 reviewed Mr. Rahman's records, did you go over his past
24 medications?

25 A. I'm not positive, but there's a way that we can look at

N28CallH

Win - Direct

1 previous medication list if there's a record available, either
2 in the computer or in the chart.

3 Q. When you did that reassessment, you were supposed to look
4 at which medications he tried before; right?

5 A. The pain management or any acute medical conditions, the
6 specialist on that specific area will recommend his suggestion,
7 his evaluation, that's what it is now. Let's say 10 years ago,
8 5 years ago, 2 years ago, treatment may be not the corrective
9 guideline at this point, so my final question is current pain
10 management treatments for the current pain, patient required to
11 get evaluated by the pain management specialist and with plan
12 of taking care of the inmates by coordination of the care and
13 the specialist.

14 THE COURT: Doctor, the question was:

15 "Q. When you did that reassessment, you were supposed to look
16 at which medications he tried before; right?"

17 THE WITNESS: Correct.

18 Q. On your reassessment, and that was page 282, tell me this,
19 do you list Tramadol?

20 A. Which are you talking about?

21 Q. I'm sorry. Give me a second. I apologize, sir. It's 282.

22 A. Which number that you were talking about, the one page
23 or --

24 Q. No. 3 says, what treatments, pharmacologic and
25 non-pharmacologic, have been tried. Please indicate whether

N28CallH

Win - Direct

1 each therapy was helpful or not helpful in improving the pain
2 level or overall function of the patient.

3 All I'm asking is, did you list Tramadol there?

4 A. It's not.

5 Q. And do you remember if you talked to Mr. Rahman and asked
6 him if any pharmacologic treatment helped him?

7 A. The treatment, as I -- Tramadol, patient might be treated
8 with Tramadol in the past, but the current treatment is by the
9 current physicians and the specialists who practice in the pain
10 management for the current time is the making decision for the
11 treatment.

12 THE COURT: Doctor, the question was: "Do you remember
13 if you talked to Mr. Rahman and asked him if any pharmacologic
14 treatment helped him?"

15 Can you answer that question?

16 THE WITNESS: No, I can't.

17 THE COURT: It's going to go a lot more quickly if you
18 listen to the question counsel is asking and answer that
19 question.

20 THE WITNESS: Sure.

21 Q. Dr. Win, can you pick up P11. Those are the records from
22 Dr. Hinespeter.

23 A. P11, okay.

24 Q. I want you to turn to Hinespeter 315, and again, it's in
25 the bottom in the middle. Before we start, do you know who

N28CallH

Win - Direct

1 Mr. Hinespeter is, sitting here today?

2 A. I know him.

3 Q. What does Mr. Hinespeter suffer from, do you know off the
4 top of your head?

5 A. No. He was in the wheelchair.

6 Q. So let's look at 315. Do you recognize what kind of
7 document this is?

8 A. It's discharge from RMU.

9 Q. Can you tell me the first two medications that
10 Mr. Hinespeter was taking when he was discharged from the RMU,
11 according to this document?

12 A. It said Flexeril, 10 milligrams, POTID, PRN, and Tramadol
13 15 milligrams, POBID, PRN.

14 Q. Can we agree this document is dated April 1st, 2022?

15 A. Yeah, it's dated April 1st, 2022.

16 Q. And policy 1.24A had already been in effect for over a
17 year; correct?

18 A. Correct.

19 Q. So let's look also at 325, do you recognize what this
20 document is?

21 A. This is from RMU. What do you want me to look at?

22 Q. Can we agree it's a discharge summary? If you look at the
23 top of 325, top left-hand corner, can we agree it says Horizon
24 Health at Cocksackie Regional Medical Unit, date, time of visit,
25 April 1, '22 at 9:30. And then it says discharge summary,

N28CallH

Win - Direct

1 monthly review; right?

2 A. Correct.

3 Q. Why does an RMU write a discharge summary, if you know?

4 A. Discharge summaries are the summary of what happened during
5 the time that he was admitted in RMU.

6 Q. How will you use that document when an RMU patient is draft
7 to Shawangunk?

8 A. RMU is regional medical unit with just higher level of
9 care. When we discharge them to our facilities, compared to
10 RMU, we are more -- I think we got less level of care than we
11 can provide. So, most likely, from RMU discharge, patients are
12 more medically stable compared to the time that they went
13 there.

14 Q. How do you use a discharge summary in your practice, do you
15 read it?

16 A. When we receive the patient, we observe or we monitor the
17 patients in the infirmary and we adjust medication as needed.

18 THE COURT: Question, doctor: "How do you use a
19 discharge summary in your practice, do you read it?"

20 THE WITNESS: We read it.

21 Q. Now, I want you to look at 338, Dr. Win. The first section
22 of that document, can we agree that's an AHR; correct?

23 A. Correct.

24 Q. And it's for John Hinespeter; correct?

25 A. Correct.

N28CallH

Win - Direct

1 Q. And the first note on April 14th of '22 says, only RMU
2 chart available, new chart made. In your experience, does that
3 mean this RMU chart was there in Shawangunk for Mr. Hinespeter?

4 A. Can you say that again. I lost that. What are you talking
5 about?

6 Q. The top box, dated April 14th of '22, that's your
7 signature, right, in the middle?

8 A. No, this is the nurse wrote it and I sign it.

9 Q. Yes, that's your initials; right?

10 A. Correct.

11 Q. And the nurse wrote: "Only RMU chart available." Correct?

12 A. Correct.

13 Q. Below that are your notes from April 28th of '22; correct?

14 A. Correct.

15 Q. Is that the first time you saw Mr. Hinespeter after he came
16 from Cocksackie RMU?

17 A. I cannot confirm or deny.

18 Q. Let's look in the top square. Doesn't it say morbid
19 obesity, no apparent distress, MD rescheduled April 28th of
20 '22?

21 A. I cannot read that.

22 Q. But your notes are underneath that; right?

23 A. Correct.

24 Q. Where are the prescriptions for Mr. Hinespeter's Tramadol
25 and Flexeril that are listed on 322?

N28CallH

Win - Direct

1 A. 322, this one, I have to look at the discharge day, how
2 many days he stayed at infirmary, and those are the things I am
3 not sure in this because hospital --

4 THE COURT: Dr. Win, the question was, "Where are the
5 prescriptions for Mr. Hinespeter's Tramadol and Flexeril that
6 are listed on 325?"

7 THE WITNESS: I -- honestly, I cannot answer the
8 question because I am not here every day and there's a process
9 that was -- even my absence there, there are other covering
10 physicians and they're going to read through to include that.
11 So honestly, I cannot answer that question.

12 Q. You're the only doctor at Shawangunk; right?

13 A. I am the only one, but I'm not here 24/7.

14 Q. Did you re-prescribe Mr. Hinespeter's Tramadol and Flexeril
15 after he arrived from the Cocksackie RMU?

16 A. I don't exactly know, but most likely I didn't prescribe
17 the Tramadol.

18 Q. Why not?

19 A. Because when we are seeing, evaluating the patients under
20 any close observation, if there is no signs of acute pain
21 condition there, we will try other medication.

22 Q. Did you talk to Mr. Hinespeter before you discontinued both
23 his Flexeril and Tramadol, and explained to him why you were
24 doing that?

25 A. Because if you look at the record there, it's not standing

N28CallH

Win - Direct

1 order, that's what we call --

2 THE COURT: Dr. Win, Dr. Win, this is a yes, no, or I
3 don't recall question.

4 "Q. Did you talk to Mr. Hinespeter before you discontinued
5 both his Flexeril and Tramadol, and explain to him why you were
6 doing that?"

7 THE COURT: Yes, no, I don't remember.

8 THE WITNESS: Yes, no, what is the other one?

9 THE COURT: Can you answer that question, please, sir.

10 THE WITNESS: Oh, okay. Because this is a clinic
11 indication there, I usually discuss with the other medication
12 there. So in this one, I didn't say that I said that
13 specifically Tramadol that I discussed with him, the Flexeril,
14 that I discussed with him.

15 MS. AGNEW: I have no further questions, your Honor.

16 THE COURT: Cross examination, please, counsel.

17 MS. AGNEW: Your Honor, why don't I move those into
18 the record. And, your Honor, of course, predictably, I also
19 failed to move P58 into the record or asked to have it
20 admitted. We used it for the testimony of Dr. Khan yesterday.
21 It's the February 3rd, 2021 email from David Dinello to his
22 staff. So I'd like to admit that into evidence, as well as
23 P10, pages 282, 283, 297, 296, 304, 317, 322, and 299, as well
24 as P11, 315, 325, and 338.

25 THE COURT: Any objection?

N28CallH

Win - Cross

1 MR. NOLAN: Honestly, we don't know which ones those
2 were because they weren't moved at the time.

3 MS. AGNEW: I gave them all to you.

4 MR. NOLAN: No objection.

5 THE COURT: Received.

6 (Plaintiffs' Exhibits P10, pages 282, 283, 297, 296,
7 304, 317, 322, and 299. P11, 315, 325, and 338 received in
8 evidence)

9 THE COURT: Cross examination, please, counsel.

10 MS. KILEY: Yes, your Honor.

11 CROSS-EXAMINATION

12 BY MS. KILEY:

13 Q. Good afternoon, Dr. Win.

14 A. Good afternoon.

15 Q. Just very few followup questions I have for you today.

16 Dr. Win, do you recall your testimony regarding the
17 338 problem code?

18 A. Yes, I do.

19 Q. Have you ever not treated a patient because they did not
20 have the 338 code on their medical problems list?

21 A. I do treat every patient, even though there's a code or
22 not, if they have pain.

23 Q. Regarding Mr. Rahman, do you recall -- if I could just
24 direct your attention to 299, the specialist recommendation,
25 dated April 16th of 2021. I'll give you a minute to take a

N28CallH

Win - Cross

1 look.

2 A. Yes.

3 Q. And to confirm, and I want to make sure I understand your
4 testimony today, you read that the first line of treatment from
5 the specialist was for two injections; correct?

6 A. Correct.

7 Q. And that was your understanding of what the recommendation
8 was; correct?

9 A. That was correct.

10 Q. And you indicated today that he, in fact, refused those
11 injections; correct?

12 A. He refused those injections, correct.

13 Q. And you would have been more comfortable prescribing the
14 Tramadol had he received those injections; correct?

15 THE COURT: We're not leading excessively, are we,
16 counsel?

17 MS. KILEY: It's cross examination, your Honor.

18 THE COURT: He's certainly not -- anyway.

19 A. The pain management physician will do the procedure as
20 quick as possible, then the patient will follow up with the
21 pain management. Then, depending on the response of that
22 procedure or injections or whatever the pain management
23 treatment is, then the situation will need to be followed up
24 with the pain management.

25 Q. Dr. Win, your decision not to prescribe Tramadol for

N28CallH

Win - Cross

1 Mr. Rahman following his April 16th, 2021 consult, did that
2 decision have anything to do with the medications with abuse
3 potential policy?

4 A. No.

5 Q. Regarding Mr. Hinespeter, when you reviewed his discharge
6 form -- do you recall reviewing his discharge form?

7 A. I don't.

8 Q. Do you recall seeing Mr. Hinespeter for the first time when
9 he came to Shawangunk after being discharged from the Cocksackie
10 RMU?

11 A. I might saw him after that.

12 Q. But do you have a recollection of seeing him?

13 A. Not in my memory. I have to look at the chart.

14 Q. Do you know if he was asking for Tramadol?

15 A. I don't know. I don't recall.

16 Q. Dr. Win, you are aware that the medications with abuse
17 potential policy no longer exists; correct?

18 A. Correct.

19 Q. And you are aware that you do not need any approval from an
20 RMD before you prescribe any medications for pain; correct?

21 A. Correct.

22 Q. And you would agree that all of your decisions are based on
23 your own clinical judgment; correct?

24 A. Correct.

25 Q. And you do not feel as though there's anything holding you

N28CallH

Win - Redirect

1 back from exercising your own independent clinical judgment;
2 correct?

3 A. Correct.

4 MS. KILEY: Thank you. I have no further questions.

5 THE COURT: Thank you. Redirect, counsel.

6 REDIRECT EXAMINATION

7 BY MS. AGNEW:

8 Q. Dr. Win, earlier you testified that you follow all of the
9 provisions of policy 1.24A; correct?

10 A. Correct.

11 Q. Do you sit down with a patient who transfers into your
12 facility every time before you discontinue their medications?
13 It's a yes or no question, sir.

14 A. Yes.

15 Q. Do you recall when we sat and I took your deposition a
16 couple weeks ago on January 11th of 2023?

17 A. Uh-huh.

18 Q. And Ms. Kiley was there; correct?

19 A. Correct.

20 Q. And there was a court reporter on the laptop; correct?

21 A. Correct.

22 Q. And I asked you:

23 "Q. Okay, so based on the medical scenario, you might not
24 re-prescribe the medication; right?

25 "A. If there is -- if there is acute medical condition, we

N28CallH

Win - Redirect

1 will handle the acute medical condition. For example, patient
2 has acute medical chest pain that we thought is related to
3 cardiac origin. Ordering any medication is not the choice. If
4 you think it's a cardiac origin there, they need to send to the
5 emergency room to rule out heart attack or something there,
6 infarct, which lead facility cannot do that. So at that level
7 of care, we'll send out.

8 "Q. So I'm talking about a patient with a chronic pain
9 condition, and let's pretend he comes in on gabapentin. Are
10 you going to automatically re-prescribe the gabapentin that he
11 was on at Cossackie RMU?

12 "A. 80 years old with some kidney problems.

13 "Q. Does gabapentin treat a kidney problem?

14 "A. No.

15 "Q. Okay. So let's --

16 "A. The reason -- kidney. I don't know how come it gets to my
17 brain, but chronic kidney disease are the ones to not give
18 NSAIDs a lot of time.

19 "Q. Sure.

20 "A. Because there's a side effect. This goes on forever, sir.

21 "Q. Okay. So when you say you have to review that --

22 "A. I need to see the patient or review it.

23 "Q. Okay. So you are not necessarily going to re-prescribe
24 what the old doctor had them on; correct?

25 "A. Not necessarily. You might have to examine them."

N28CallH

Rahman - Direct

1 MS. AGNEW: That's all, your Honor.

2 THE COURT: Recross, counsel?

3 MS. KILEY: No, your Honor.

4 THE COURT: Thank you. Thank you, Dr. Win, we're
5 finished. You're excused, sir.

6 THE WITNESS: Thank you very much.

7 THE COURT: Who do you want next, counsel?

8 MR. MORRISON: Rashid Rahman.

9 THE COURT: Yes, please.

10 Mr. Rahman, would you give your attention to
11 Ms. Phillips, please.

12 RASHID RAHMAN,

13 called as a witness by the Plaintiffs,

14 having been duly sworn, testified as follows:

15 THE DEPUTY CLERK: Please state your name and spell it
16 for the court reporter.

17 THE WITNESS: My name is Rashid Rahman. You spell my
18 name R-a-s-h-i-d, and my last name is spelled R-a-h-m-a-n.

19 THE COURT: Mr. Morrison.

20 MR. MORRISON: Thank you, Judge.

21 DIRECT EXAMINATION

22 BY MR. MORRISON:

23 Q. Good afternoon, Mr. Rahman. Let me just start by
24 apologizing for forcing you into quarantine by exposing you to
25 COVID, I know it's not a good place for you to be, but I'm

N28CallH

Rahman - Direct

1 sorry.

2 A. It's all right.

3 Q. How old are you?

4 A. I am 33 years old.

5 Q. I want to kind of just cut to the chase right now. Can you
6 describe for the Court your current medical conditions and
7 associations it has with any pain you are receiving, you feel?

8 A. As I'm talking, if you can see me, I am bent over because I
9 live in excruciating pain. My whole entire back and my neck
10 and everything, I hurt right now.

11 Q. What is your understanding of why your back and your neck
12 is causing you pain?

13 A. It is when they took away my medical medicine that I was --
14 that they was giving me to use for my surgery was Ultram and
15 Xanax, it was working.

16 Q. Let me go back a little bit. At some point in time, did
17 you have a surgery that affected you positively or negatively?

18 A. It affected me in a bad way because I'm still in the
19 position right now where I can't do really for myself what I
20 would like to do.

21 Q. Tell me what that surgery was?

22 A. They removed two vertebrae from out of my back because they
23 said it was decompression on my spinal cord and they were
24 supposed to put some titanium rods and screws in that they
25 never did.

N28CallH

Rahman - Direct

1 Q. After you had that surgery, was there any complications
2 that occurred?

3 A. Yes, there were.

4 Q. What year was that surgery?

5 A. That was in 2016, sir.

6 Q. And tell me about the complications you had after your back
7 surgery?

8 A. Like my whole entire back ache feels like my neck going
9 down to my spine, to my lower ribs in the back. It's just I'm
10 always in a throbbing pain. As I'm speaking to you now, my
11 whole left side is numb.

12 Q. After that first surgery, did you have to have another
13 surgery or another operation?

14 A. Yes, I did.

15 Q. And when did that occur in relation to the first surgery?

16 A. It happened a day and a half after that because it seemed
17 like I almost died. What happened is they said there was fluid
18 left from the first surgery that was leaking on my spinal cord.

19 Q. Was it your understanding you had to go into an emergency
20 surgery?

21 A. Yes.

22 Q. After that surgery, that second surgery was done, tell me,
23 did your pain increase or did it decrease?

24 A. It felt a little bit more like bearable, but it was a
25 hurricane of a problem that I'm still feeling and dealing with.

N28CallH

Rahman - Direct

1 Q. At any point in time, were you prescribed any pain
2 medication to deal with your back pain?

3 A. Immediately after surgery, yes, I was.

4 Q. Prior to surgery, were you prescribed any pain medication?

5 A. Nothing they was giving me in the Department of Corrections
6 but Motrin.

7 Q. Tell me about the medication that you received after
8 surgery, what was that?

9 A. They was giving me a medication Ultram and Xanax.

10 Q. And at that time, where were you housed in the Department
11 of Corrections?

12 A. At that time, I was still in the hospital with Albany
13 medical, and then I was moved to Cocksackie RMU.

14 Q. When you were at Cocksackie RMU, did they continue to
15 prescribe you Ultram?

16 A. Yes, sir, that and Xanax.

17 Q. At some point in time, did you get discharged from
18 Cocksackie RMU?

19 A. Yes, sir, there was a time that I got discharged from
20 Cocksackie.

21 Q. And where did you get transferred to, what facility?

22 A. They transferred me to a medical unit called Walsh.

23 Q. Describe for me the treatment you received at Walsh.

24 A. Well, it's like a medical facility that they transfer you
25 to that's within the Department of Corrections. It was

N28CallH

Rahman - Direct

1 horrific and it was like almost as if anything happens to you,
2 this is the place normally they send you because I couldn't
3 move none of my body parts from my midsection going down.

4 Q. Were you continued on Ultram and Xanax medication while you
5 were at Walsh RMU?

6 A. Yes, sir, I was.

7 Q. How long were you at Walsh RMU?

8 A. About maybe almost three months, something like that.

9 Q. In that three months, did you progress at all, get any
10 better?

11 A. I was doing the therapy and I felt like I was getting a
12 little bit more strength in my upper extremities.

13 Q. This is a time that you were continuing on your medication,
14 the Ultram and Xanax?

15 A. Correct, sir.

16 Q. After Walsh, where did you get transferred to?

17 A. I was transferred to Shawangunk.

18 Q. When you were transferred to Shawangunk, was your Ultram
19 and Xanax medication continued?

20 A. The Xanax, they discontinued. They kind of like waned me
21 off a little bit at Walsh. When I got here, I was still on
22 Ultram.

23 Q. How long after you got to Shawangunk did you continue on
24 Ultram?

25 A. I would say maybe eight to ten months.

N28CallH

Rahman - Direct

1 Q. And was Ultram effectively treating your pain symptoms?

2 A. Yes, I could sleep at night.

3 Q. Did you ever request to come off the Ultram medication?

4 A. No, I did not.

5 Q. Do you know, roughly, what year this was?

6 A. That was in 2017.

7 Q. When you returned to Shawangunk?

8 A. When I got to Shawangunk.

9 Q. At some point in time -- well, who was your medical
10 provider at Shawangunk?

11 A. At that time, it was Dr. Lee.

12 Q. At any point in time, did your Ultram medication get
13 discontinued?

14 A. Yes, it did.

15 Q. Do you recall when that occurred?

16 A. May I reflect my records?

17 Q. No, if you don't remember, it's okay.

18 How long were you at Shawangunk until, roughly
19 estimate, until your medication was discontinued?

20 A. I would say around going to June or July of 2017.

21 Q. How did you learn your Ultram medication was being
22 discontinued?

23 A. Because Dr. Lee had told me I can't give you Ultram no
24 more. I said nah, you can't do this to me.

25 Q. Did Dr. Lee tell you that before he discontinued you from

N28CallH

Rahman - Direct

1 the Ultram or after you were discontinued?

2 A. There was a time I went to medical, I said what is this, he
3 said I can't give you Ultram no more. I said nah, I'm not
4 taking something I don't know.

5 Q. Was that someone at the nurses window or was that the
6 doctor?

7 A. That was at the nurses window when I went to pick up my
8 medication.

9 Q. What did Dr. Lee tell you, when you next spoke to him,
10 about the Ultram?

11 A. He said something pertaining to the fact that Department of
12 Corrections is stopping all narcotic medications.

13 MR. NOLAN: I'm going to object to the extent he was
14 offering it for the truth of the matter asserted.

15 THE COURT: I assume it's being offered for the fact
16 that it was said.

17 MR. NOLAN: Yes, your Honor.

18 THE COURT: Thank you.

19 Q. Mr. Rahman, after you were discontinued from the Ultram
20 medication, how did that affect you, if at all?

21 A. It affected me in multiple different ways. I couldn't
22 sleep. I was in chronic pain. I couldn't go to some call outs
23 that they were scheduling me to go to outside trips for. I
24 just couldn't do it.

25 Q. Did you explain these symptoms and what was occurring to

N28CallH

Rahman - Direct

1 you to any medical staff at Shawangunk?

2 A. I continuously expressed my pain to medical staff here at
3 Shawangunk.

4 Q. Would you tell them that your Ultram medication helped you
5 with your pain?

6 A. Yes.

7 Q. Did you ask for that medication to be reinstated?

8 A. Yes.

9 Q. During this time, were they trying any other medications on
10 you?

11 A. A slew of all type of different medications they tried.

12 Q. When they tried them and prescribed them, did you take
13 them?

14 A. I tried it to see if it was going to help for my pain.

15 Q. Did it help for your pain?

16 A. No, it made me feel funny, very funny.

17 Q. Roughly, how many other medications do you believe they
18 tried on you?

19 A. Maybe five or six.

20 Q. After those medications were tried and you informed them
21 they weren't working, at any point in time, did they discuss
22 putting you back on Ultram?

23 A. I asked Dr. Lee one time I went out to a medical call and
24 he gave me the Ultram back, but just for a limited time.

25 Q. What do you mean, just for a limited time, how long?

N28CallH

Rahman - Direct

1 A. Maybe like a week or a month, something like that.

2 Q. And then what --

3 A. A week or a month.

4 Q. Was it discontinued again?

5 A. Yes, it was.

6 Q. Were you ever informed why it was discontinued again?

7 A. No, I was not.

8 Q. Who is your current medical provider at Shawangunk?

9 A. In the present day, it's a Dr. Win.

10 Q. When is the last time you met with Dr. Win?

11 A. Approximately, maybe three to four weeks ago.

12 Q. Roughly, how many times do you think you've met with

13 Dr. Win since he became your provider?

14 A. I would say about maybe nine.

15 Q. Have you ever discussed with Dr. Win Ultram?

16 A. Several times, all the time.

17 Q. And describe to me what you talk about with Dr. Win about
18 Ultram?

19 A. Can I please have my Ultram medication back, please.

20 Q. And what response does he give you to that request?

21 A. I can't give it to you unless I send you out to see a
22 specialist, but I'm going to try you on some other kind of pain
23 medication.

24 Q. I want to direct your attention to around April of 2021.

25 Do you recall around April 2021 going to see a specialist by

N28CallH

Rahman - Direct

1 the name of Dr. Omar Hussein?

2 A. Very well.

3 Q. Tell me what you recall about that encounter with Dr. Omar
4 Hussein?

5 A. I have expressed my pain to Dr. Omar. And I also told him
6 that I was sent down here because I needed to see a specialist
7 in order for me to get my Ultram back, and it was something
8 like a neuro-type needle they can put into the spinal cord in
9 your back, either that or the Ultram. So I had opted to try
10 it, but then they after they didn't take so long of not giving
11 it to me, but he approved for me to have the Ultram back.

12 Q. Did you recall Dr. Hussein giving you an examination?

13 A. Yes, he did examine me.

14 Q. Was it your understanding after that encounter with
15 Dr. Hussein that he recommended that you would be returned to
16 Ultram?

17 A. He most positively did say that I'm going to return you
18 back on Ultram.

19 Q. And just for the record, do you understand Ultram to be the
20 same medication as Tramadol?

21 A. Yes, sir.

22 Q. When you returned after that consultation with Dr. Hussein,
23 did you speak to Dr. Win about those recommendations?

24 A. When I went to see Dr. Win, when he put me on a doctor's
25 call out, I spoke to him, I said can you please check the

N28CallH

Rahman - Direct

1 computer because I don't understand why it is I'm not getting
2 my Ultram at the window when you sent me out to see the
3 specialist and he approved it.

4 Q. And did he tell you why he wasn't giving you a prescription
5 of Ultram?

6 A. Yes. He said I can send you upstairs to the infirmary and
7 I can give it to you upstairs. I said why do I have to go up
8 to the infirmary when I went to see the specialist, as you
9 said, you recommended me to go see a specialist, and if a
10 specialist approved of me, I could have it.

11 Q. So is it fair to say that he did not allow you or prescribe
12 you the Ultram medication?

13 MR. NOLAN: Objection.

14 THE COURT: Basis.

15 MR. NOLAN: To the extent it's not what he testified
16 to. He actually testified that he offered it to him in the
17 infirmary and he refused to go.

18 THE WITNESS: I didn't say that.

19 THE COURT: Excuse me. Mr. Rahman, you got to let
20 counsel do this.

21 THE WITNESS: Oh, I'm sorry.

22 THE COURT: Mr. Morrison.

23 BY MR. MORRISON:

24 Q. So it's your testimony that he said that you have to go and
25 stay in the infirmary to receive Ultram?

N28CallH

Rahman - Direct

1 A. Are you talking to me?

2 Q. Yes, sir.

3 A. Yes. And then I said why should I have to go upstairs when
4 it was approved? I did everything you told me to do and you
5 approved it.

6 Q. Can you tell me, what does it mean to go upstairs in the
7 infirmary, does it affect you in any way?

8 A. Yes, they hold you hostage in this infirmary in this jail.
9 When you go upstairs -- I'm going to use it in the terminology
10 and what it really is. There should be no reason I can get all
11 my medications at the window that I got to go upstairs and be
12 away from my cell or population just to retrieve something that
13 was approved.

14 Q. Are you allowed to bring your belongings into the
15 infirmary?

16 A. You're not allowed to bring nothing up there, absolutely
17 nothing.

18 Q. At any point in time after this meeting with Dr. Win, did
19 you meet with Dr. Win again regarding your pain?

20 A. Yes.

21 Q. Can you tell me roughly when that encounter occurred?

22 A. Every single time I went to see Dr. Win or had a call out
23 to see Dr. Win, I expressed my concerns and my pain to him
24 about my Ultram that was approved.

25 MR. MORRISON: One second.

N28CallH

Rahman - Cross

1 Mr. Rahman, thank you so much. I have nothing further
2 right now.

3 THE WITNESS: Okay.

4 THE COURT: Cross examination, please, counsel.

5 CROSS-EXAMINATION

6 BY MR. NOLAN:

7 Q. Good afternoon. Can you hear me okay?

8 A. Yes, sir.

9 Q. I just have a few questions for you.

10 You testified that you could have gotten the pain
11 medication you wanted had you gone to the infirmary, but you
12 didn't want to go to the infirmary; is that right?

13 A. To that extent, but it's more than just that.

14 Q. But fair to say the infirmary is somewhere you didn't want
15 to go, even if it meant you could get your medication?

16 A. But that's not how the procedure goes and it's a violation.

17 Q. I'm not asking you that. I'm just asking you, would you
18 rather go to the infirmary and have your pain relieved from
19 medication or just not go to the infirmary?

20 A. Yes, but what I'm saying to you, I went out on the trip to
21 see the specialist with several people, and they all got their
22 pain management drugs that day, and they went to the window to
23 get theirs that same day. So why do I have to be the only one
24 to have to go upstairs.

25 Q. So this is unique to you then; is that fair to say?

N28CallH

Rahman - Cross

1 A. It's not unique to me, it's the games that they play.

2 Q. But there were others who went to the same specialist,
3 seeking pain medication, got the pain medication, and were able
4 to get it on terms they liked; is that your testimony.

5 MR. MORRISON: Objection.

6 THE COURT: Sustained.

7 Mr. Rahman, if you hear counsel say objection, please
8 just hold your answer and then we'll work it out. In this
9 instance, you don't have to answer that question.

10 THE WITNESS: Thank you.

11 THE COURT: Yes, sir.

12 Counsel.

13 Q. You are given a choice, essentially, to get the pain
14 medication you wanted if you wanted to go to the infirmary; is
15 that fair?

16 A. It would be fair to say that once I work out with a
17 specialist -- see the specialist according to the direction of
18 Dr. Win, I did exactly what he asked me to do. He said the
19 only way you can get the Ultram back is to go out and see a
20 specialist. I did that, the specialist approved it -- I
21 shouldn't have to go up in the infirmary to receive something
22 that was approved for me at your window. You told me to go see
23 a specialist and I did that.

24 Q. When you got back and saw Dr. Win, he gave you the option
25 of getting the Ultram in the infirmary; correct?

N28CallH

Rahman - Cross

1 A. Yes, he did.

2 Q. So you would rather not get the Ultram than go to the
3 infirmary?

4 A. I wrote to my attorneys and told my attorneys exactly what
5 had happened.

6 Q. Have you had an opportunity to see or to have a pain
7 management consult within the last two years?

8 A. In 2021 when I went out to see Dr. Omar, that was when it
9 was, but to have somebody else come in here and assess me, no.

10 Q. Do you recall being offered the ability to get a cervical
11 epidural steroid injection for your back pain in December of
12 2021?

13 A. Yes.

14 Q. Do you recall refusing that opportunity?

15 A. Yes.

16 Q. And do you recall signing an inmate refusal form,
17 recognizing that that could affect your health and wellness?

18 A. I recall signing it for the reasons stated that -- I don't
19 know if I can state the reason, but if I can, the date they
20 wanted to give it to me was the date I was seeing my attorney.
21 I find it very odd that all of a sudden you want me to go out
22 to the hospital on the day I got to see my attorneys. Really,
23 after almost 10 months?

24 Q. So seeing your attorney was more important than getting
25 pain relief; correct?

N28CallH

Rahman - Cross

1 MS. AGNEW: Objection.

2 THE COURT: Sustained.

3 Q. Was seeing your attorney more important than getting --

4 THE COURT: I think I just sustained that objection.

5 MR. NOLAN: I rephrased it, your Honor.

6 THE COURT: I don't think you rephrased it.

7 MR. NOLAN: I initially led him. This time I said was
8 seeing your attorney more important than going to get pain
9 relief that day.

10 MS. AGNEW: Let him answer it.

11 THE COURT: You may answer, sir.

12 A. I came to the conclusion after almost 10 months, because
13 they had told me when I went to see the specialist that I would
14 be going out next week. After 10 months, almost 10 to 9 months
15 passed and I heard a lot of different stories about the
16 epidemic needle in your back that they got to sedate you, laid
17 out. I got scared because an inmate died in the Department of
18 Corrections from that same procedure.

19 Q. So how about moving forward to November of 2022. Do you
20 recall, on November 18th, 2022, having the ability of going to
21 a pain management consult?

22 A. Yes, I do.

23 Q. Do you recall refusing that opportunity?

24 A. Yes, I did, with an explanation with a letter to my
25 attorneys.

N28CallH

Rahman - Redirect

1 Q. Do you recall signing an inmate refusal form, acknowledging
2 that you were making that refusal?

3 A. Yes, sir. And I also remember what I said.

4 Q. Do you recall saying that you were in excruciating pain
5 when you signed that refusal?

6 A. Yes, I do.

7 MS. KILEY: That's all, sir. Thank you.

8 THE COURT: Thank you. Redirect, counsel.

9 MR. MORRISON: Briefly, your Honor.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. MORRISON:

13 Q. Mr. Rahman, can you explain to the court why you refused to
14 go to the pain management specialist appointment recently?

15 A. One, I was in excruciating pain, and two, I felt that it
16 was -- like it was a hoax of the department because I gave my
17 explanation on that sheet. I said why should I have to go out
18 and see the same pain management again when I was already
19 approved for that same drug. He said you just got to go and
20 see him. I said, for you to refuse me again?

21 Q. Did you talk to Dr. Win about your refusal?

22 A. No, it's on the refusal form.

23 Q. Did you ever talk to Dr. Win about the refusal?

24 A. Yes, I did.

25 Q. What did you tell him?

N28CallH

Rahman - Redirect

1 A. I told him the reason I didn't want to go that day is
2 because why should I have to go when you already told me to go
3 out to see pain management and you would give me the Ultram and
4 you turned around after I was approved and you did not give it
5 to me, so when you want to send me again, what would make me
6 think that it would be a different outcome?

7 Q. Mr. Rahman, do you believe that you can spend the rest of
8 your sentence living in the infirmary?

9 A. No, I can't. I cannot do that.

10 Q. Do you believe that being ordered by Dr. Win that you could
11 only receive your medication, your Ultram medication, if you
12 lived in the infirmary as punishment.

13 MR. NOLAN: Objection. His belief is totally
14 irrelevant.

15 THE COURT: Mr. Morrison.

16 MR. MORRISON: I'm just trying to find out why he
17 didn't go to the infirmary to take his medication, but I can
18 rephrase, your Honor.

19 THE COURT: Yes, sir.

20 Q. Mr. Rahman, why did you not want to go and live in the
21 infirmary so you can have Ultram medication?

22 A. It's not nowhere that any person that is incarcerated, that
23 has some form of liberty living in population to then live in
24 the infirmary. It just can't work. It's not a good thing.
25 Not that I refused my medication, I refused the point that why

N28CallH

Rahman - Redirect

1 should I, that out of everybody that went out to the
2 specialist, why do I, me, have to go up to the infirmary to get
3 my medication, why?

4 Q. Did he ever explain to you why, Dr. Win?

5 A. No. But I know that I was getting my Ultram when I first
6 came here. So what's the problem?

7 Q. When you were being prescribed and taking Ultram before,
8 were you living in the infirmary?

9 A. No, I was not.

10 MR. MORRISON: Nothing further. Thank you, your
11 Honor.

12 THE COURT: Cross examination.

13 MR. NOLAN: Nothing further, your Honor.

14 (Witness excused).

15 THE COURT: Remind me who we have next, please.

16 MS. AGNEW: Mark Daniels, your Honor.

17 Your Honor, this will be our last witness.

18 THE COURT: Yes, ma'am.

19 MARK DANIELS,

20 called as a witness by the Plaintiffs,

21 having been duly sworn, testified as follows:

22 THE DEPUTY CLERK: State your name and spell it for
23 the record.

24 THE WITNESS: Mark Daniels, M-a-r-k D-a-n-i-e-l-s.

25 THE COURT: Ms. Agnew.

N28CallH

Daniels - Direct

1 DIRECT EXAMINATION

2 BY MS. AGNEW:

3 Q. Good afternoon, Mr. Daniels. First, I want to apologize
4 that you got quarantined. I want you to remember it's
5 Mr. Morrison's fault. Okay?

6 A. Okay.

7 Q. Okay. I'm sorry about that.

8 A. We'll deal with him later.

9 Q. We'll deal with him later, that's right.

10 I want to go over your medical history. We don't want
11 to belabor this too much, but can you give us a little synopsis
12 of your medical history?

13 A. Yes. I have back injuries and they pretty much
14 deteriorated to the point where I had to have two final
15 fusions. Since then, since that time, I'm still in pain, I've
16 lost feelings in my hands, both hands, shoulder pain, neck
17 pain, and I have problems with my equilibrium.

18 Q. Can you tell me approximately when did you have your two
19 spinal fusions performed?

20 A. The first one in my lower back was, I want to say around
21 February or March of 2015. The second one was in 2016,
22 probably around the same time, around May.

23 Q. Were you in DOCCS custody when you had those surgeries?

24 A. Yes.

25 Q. Can you just tell the Court, how old are you now,

N28CallH

Daniels - Direct

1 Mr. Daniels?

2 A. I'm 58.

3 Q. So you mentioned that you lost feeling in your hands. Can
4 you describe that for the record, what that feels like?

5 A. Well, it's just a numbness in all -- like the tips of all
6 my fingers to the point where I can't feel -- to button my
7 shirt or something, I have to look down to make sure I'm
8 buttoning my shirt. Same thing with tying my shoes. I can't
9 feel in my pockets if I reach in my pocket to find something.
10 It's just discomfort, a lot of discomfort.

11 Q. Other than your hands, do you have other sources of chronic
12 pain?

13 A. Yes, my neck, my back, and sometimes my left foot, my left
14 foot area.

15 Q. I noticed when you came in, you're not in a wheelchair,
16 though; correct?

17 A. Right.

18 Q. Do you use any devices to ambulate?

19 A. I use a cane. The wheelchair is just for long distance, I
20 can't go too long, but I've been pretty much -- I'm trying to
21 stay active. As long as I stay moving, I'm pretty good. The
22 pain is routine now.

23 Q. Do you have any jobs right now in DOCCS?

24 A. No, not really. I'm a clerk. I just -- I'm in the
25 clerking facility in the block that I'm in. I do the paperwork

N28CallH

Daniels - Direct

1 for the block officers.

2 Q. Recently, did you try to work as a pusher?

3 A. Right. Yeah, mobile assistance, go around and do whatever
4 they need to go through, any of their call outs and anything
5 like that.

6 Q. Is it easy for you to work as a pusher with your chronic
7 pain ailments?

8 A. Well, yeah, because pushing, holding onto the wheelchair
9 pretty much stabilizes me to push around. (Technical
10 interruption) holding onto the wheelchair stabilizes me. I'm
11 not going that far in distance, so I work with it.

12 Q. Since your surgeries, were you ever prescribed a medication
13 that helped with your chronic pain?

14 A. No.

15 Q. Do you recall a time when you took Neurontin?

16 A. Neurontin, yes. Yes, I do. Neurontin really didn't work
17 for me, pretty much just gave me stomach problems. Nothing
18 really went too far.

19 Q. Were you ever prescribed anything that helped with your
20 chronic pain?

21 A. No. Maybe prior to the facility, there was one called
22 Ultram. That worked pretty good, but that was prior to my
23 surgeries. But that was really the only one that gave me
24 relief.

25 Q. Do you know why you are a plaintiff in this case?

N28CallH

Daniels - Direct

1 A. Because I'm pretty much being denied all medical treatment.

2 Q. Did there come a time when your Neurontin was discontinued?

3 A. Yes.

4 Q. When it was discontinued, do you know who your provider
5 was?

6 A. Dr. Lee.

7 Q. Did you have any conversations with Dr. Lee about that
8 discontinuation?

9 A. Yes, I did. I told him numerous times, you know, that it
10 really wasn't working for me, it was giving me stomach
11 problems. Instead of them giving me something else, he upped
12 the doses. So I was getting like maybe 1200 milligrams of that
13 stuff a day and it really wasn't doing nothing for me but
14 making me sick.

15 Q. Did you request alternatives?

16 A. Yes, I asked him to put me on something else and nothing
17 was given to me.

18 Q. Can you tell me, have you ever seen any specialist for your
19 pain?

20 A. Yes.

21 Q. Who have you seen?

22 A. I seen several specialists. I seen a doctor who actually
23 did my surgery, Dr. Delfino. He recommended some medications
24 for me. The other doctor that I seen besides him also
25 recommended medications, but he never gave it to me.

N28CallH

Daniels - Direct

1 Q. Do you recall what medications they recommended for you?

2 A. Yes. I know one was called Lyrica, that was denied. I'm
3 really not good with the names of these medications, but there
4 was several, there definitely was several.

5 Q. And since those recommendations have been made, have you
6 ever received any of the medications recommended by the
7 specialists you saw?

8 A. No, I've never seen any, nothing. The only thing that's
9 given to me was ibuprofen.

10 Q. Does the ibuprofen help you, sir?

11 A. A little, but it's not effective, like, not really.

12 Q. Is the ibuprofen more or less effective than Neurontin when
13 you took it?

14 A. It's pretty much the same. I think the ibuprofen would
15 work a little more, but it's still just -- just really, you
16 know, it's pretty much the same, I guess.

17 Q. Tell me, Mr. Daniels, currently, how does your chronic pain
18 affect your daily living?

19 A. I mean, if I don't get up and stretch, I'm in pain. Even
20 when I'm stretching I'm in pain. It's just a constant pain.
21 Everyday living, I can't do nothing that I want to do. I'm a
22 barber, so if I attempt to hold the equipment in my hand to cut
23 hair because the trimmers will fly out of my hand unknowingly,
24 I can't feel it. There's nothing I could really do physically
25 to -- I keep counting my time, and everyday living is hard

N28CallH

Daniels - Cross

1 right now because I can't do nothing and I can't get no relief.
2 I ask for physical therapy, I can't get physical therapy. I
3 ask for pain medication, I can't get that. I'm sitting back,
4 suffering. I suffer every day.

5 MS. AGNEW: I have no further questions.

6 THE COURT: Thank you. Cross examination, please,
7 counsel.

8 CROSS-EXAMINATION

9 BY MS. THOMAS:

10 Q. Hi, Mr. Daniels. I have a few questions for you.

11 A. Hello.

12 Q. In 2020, you wrote a document stating that you were unable
13 to walk upstairs due to your pain; is that correct?

14 A. Due to my pain? Well, it was due to my dropped foot that I
15 had, you know, because I wasn't getting no type of physical
16 therapy to build my muscle and stuff like that. So I was
17 really having problems lifting my legs at that time, yes.

18 Q. So in 2020, you had difficulties moving around; is that
19 correct?

20 A. Right, I had good days and bad days.

21 Q. In April 2022, you were medically cleared for your job as a
22 wheelchair pusher; is that correct?

23 A. Right.

24 Q. And Dr. Win determined that you were physically able to
25 perform that job at your facility; is that correct?

N28CallH

Daniels - Cross

1 A. Yes.

2 Q. And in your testimony that you just went over with
3 Ms. Agnew, were you relying on documents in front of you?

4 A. Am I relying on documents in front of me?

5 Q. Yes. Did you refer to any documents that are in front of
6 you?

7 A. No.

8 Q. As you sit here today, do you have any documents in front
9 of you that you are reviewing?

10 A. I was looking for the name of medications that was offered
11 to me that I never got, but that was it.

12 Q. And what document were you looking for that information on?

13 A. Documents that I had prior to coming here from the medical
14 department here.

15 Q. Are those sitting on the table in front of you right now?

16 A. Right.

17 Q. Could you please hold up those documents to the camera,
18 please.

19 Could we see the front page of the document, please.

20 A. All the pages are pretty much the same. It's just
21 paperwork that I have with me.

22 Q. Did you use that document today to guide the answers to the
23 questions that you were asked?

24 A. To what?

25 Q. To form the basis for the answers of the questions that you

N28CallH

Daniels - Cross

1 were asked?

2 A. No, I did not.

3 MS. THOMAS: Thank you, sir. Nothing further.

4 THE COURT: Thank you. Redirect.

5 MS. AGNEW: Nothing further.

6 THE COURT: Sir, you're excused.

7 (Witness excused)

8 MS. AGNEW: Your Honor, the plaintiffs are going to
9 rest their opposition.

10 THE COURT: Yes, ma'am.

11 Rebuttal, friends.

12 MR. NOLAN: Your Honor, we think we might be able to
13 make rebuttal very simple if we can enter some documents, but
14 also depending on whether your Honor is going to allow
15 post-hearing briefing so we can point to some of the documents
16 that are already in the record.

17 THE COURT: I think we can have briefing, but it has
18 to be prompt.

19 MR. NOLAN: Of course.

20 THE COURT: A week, a week.

21 MR. NOLAN: I think then we can point to the documents
22 that are already in the record.

23 THE COURT: Do we have rebuttal witnesses is my
24 question.

25 MR. NOLAN: We need to confer shortly on that, but it

N28CallH

Daniels - Cross

1 might be one at the most.

2 THE COURT: Why don't you let me know.

3 (Recess)

4 THE COURT: Friends, what's the good word?

5 MS. KILEY: Your Honor, we are not calling any
6 rebuttal witnesses. The only administrative thing we do ask is
7 we would ask 10 days for a brief.

8 THE COURT: I'll give it to you, but it gets stale in
9 my brain, and the longer you wait, the longer you're going to
10 have to wait for a decision.

11 MS. KILEY: Thank you. We appreciate it.

12 MS. AGNEW: Your Honor, after the 10 days, we'll turn
13 over our opposition five days later.

14 THE COURT: Okay, friends. Let's go.

15 MR. NOLAN: One other thing before we adjourn, your
16 Honor. I wanted to, just for the record, these are stipulated
17 to, can we put P4 into the record?

18 MS. AGNEW: No.

19 MR. NOLAN: We stipulated to the admissibility of them
20 already.

21 MS. AGNEW: No.

22 THE COURT: Which one is that?

23 MR. NOLAN: This is Wilkerson's records. You have
24 them, your Honor. It's plaintiffs' exhibit.

25 THE COURT: I thought it was an incomplete set?

N28CallH

Daniels - Cross

1 MS. AGNEW: May I, your Honor?

2 THE COURT: Yes.

3 MS. AGNEW: We admitted a couple pages from it. The
4 very bulk of that document is already in the record on the
5 docket, but I'm not creating exhibits for you, sir. You need
6 to do that.

7 MR. NOLAN: Your Honor, is there a problem --

8 THE COURT: Guys, you can't talk over each other,
9 especially late in the day.

10 MR. NOLAN: We would like to enter P4 into the record.
11 It's plaintiffs' exhibit. She entered pieces of it. I think
12 it's better to have a complete P4 in the record to be complete,
13 your Honor. These are documents she's had, we've had.
14 Probably a lot of them are already in the docket --

15 THE COURT: It's not the complete record. I
16 understand it was here and there.

17 MS. AGNEW: It was this hearing.

18 MR. NOLAN: I'm not offering it for the complete
19 record, your Honor. If we have only selected pieces of what's
20 here, we're certainly not going to have a complete record on
21 the docket.

22 THE COURT: You're the one who's arguing you want the
23 complete document on the docket, it's not complete.

24 MR. NOLAN: Just P4. These are all medical records,
25 she has already stipulated to their admissibility.

N28CallH

Daniels - Cross

1 MS. AGNEW: Your Honor, he could have done that when
2 he crossed Mr. Wilkerson.

3 MR. NOLAN: We can bring rebuttal witnesses back, your
4 Honor.

5 MS. AGNEW: Please do.

6 MR. NOLAN: The page we want is already on the docket,
7 your Honor. I suppose if we're going to be that difficult and
8 not grant a single professional courtesy as has been this case,
9 the entire case, that's fine.

10 MS. AGNEW: Yes, so stipulated.

11 THE COURT: All right, friends. Would you be kind
12 enough, counsel, when you file your briefs to give us two hard
13 copies, please.

14 MS. KILEY: Yes, your Honor.

15 THE COURT: Thank you. All right, friends. Thanks
16 very much. Good afternoon.

17 * * *

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

FELIPE RIVERA-CRUZ

Direct By Mr. Morrison 317

Cross By Ms. Thomas 332

Redirect By Mr. Morrison 336

Recross By Ms. Thomas 339

JULIO MORONTA

Direct By Mr. Morrison 341

Cross By Ms. Thomas 351

HLA PE WIN

Direct By Ms. Agnew 359

Cross By Ms. Kiley 385

Redirect By Ms. Agnew 388

RASHID RAHMAN

Direct By Mr. Morrison 390

Cross By Mr. Nolan 402

Redirect By Mr. Morrison 406

MARK DANIELS

Direct By Ms. Agnew 409

Cross By Ms. Thomas 414

PLAINTIFF EXHIBITS

Exhibit No.	Received
-------------	----------

P10, pages 282, 283, 297, 296, 304, 385

317, 322, and 299. P11, 315,

325, and 338

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25